

SENATE BILL 436

Introduced by Jacobson, et al.

3/23	Fiscal Note Requested
3/24	Introduced
3/24	Referred to Taxation
3/24	First Reading
3/26	Hearing
3/26	Fiscal Note Received
3/26	Fiscal Note Printed
3/27	Revised Fiscal Note Requested
3/27	Committee Report--Bill Passed as Amended
3/29	Revised Fiscal Note Received
3/29	Revised Fiscal Note Printed
3/29	2nd Reading Passed as Amended
3/30	3rd Reading Passed
	Transmitted to House
3/31	Referred to Taxation
3/31	First Reading
4/05	Hearing
4/06	Tabled in Committee
4/14	Committee Report--Bill Not Concurred
4/15	Motion Failed to Lay on the Table
4/15	Adverse Committee Report Adopted

1 Senate BILL NO. 436
2 INTRODUCED BY Jacobson Van Valkenburg Ferguson
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY
5 TRANSFER TAX ON CERTAIN TRANSFERS OF REAL PROPERTY AT THE
6 RATE OF 1 PERCENT OF THE VALUE RECORDED ON THE REALTY
7 TRANSFER CERTIFICATE; DEPOSITING THE PROCEEDS OF THE TAX IN
8 THE SCHOOL EQUALIZATION AID ACCOUNT; ALLOWING A CREDIT
9 AGAINST INDIVIDUAL INCOME TAX LIABILITY FOR MONTANA
10 RESIDENTS FOR A PORTION OF THE REALTY TRANSFER TAX; AMENDING
11 SECTIONS 15-1-501, 15-7-301, 15-7-302, 15-7-303, 15-7-305,
12 15-7-306, 15-7-307, 15-7-310, AND 20-9-343, MCA; AND
13 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 **Section 1.** Section 15-7-301, MCA, is amended to read:
17 "15-7-301. Short title. This part may be cited as the
18 "Realty Transfer and Tax Act".
19 **Section 2.** Section 15-7-302, MCA, is amended to read:
20 "15-7-302. Purpose. The purpose of this part is to:
21 (1) impose a tax on the transfer of real property and
22 to provide for the distribution of the proceeds from the tax
23 to the state school equalization aid account; and
24 (2) obtain sales price data necessary to the
25 determination of statewide levels and uniformity of real

1 estate assessments by the most efficient, economical, and
2 reliable method."

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

4 "15-7-303. Definitions. As used in this part, the
5 following definitions apply:

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

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

12 (3) "Real estate" and "real property" includes include:

13 (a) land;

14 (b) growing timber;

15 (c) buildings, structures, fixtures, fences, and
16 improvements affixed to land.

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

20 (5) "Value" means:

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

1 real property; or

2 (b) in the case of a gift or a transfer with nominal
 3 consideration or without stated consideration, the estimated
 4 price the real property would bring in an open market and
 5 under the current prevailing market conditions in a sale
 6 between a willing seller and a willing buyer, both
 7 conversant with the real property and the current prevailing
 8 market conditions."

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

10 "15-7-305. Realty transfer certificate required. (1)

11 The county clerk and recorder shall cause to be executed by
 12 the parties to the transaction or their agents or
 13 representatives a certificate declaring the consideration
 14 paid or to be paid for the real estate transferred.

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

22 (3) The form of the certificate ~~shall~~ must be
 23 prescribed by the department of revenue, and the department
 24 shall provide an adequate supply of such forms to each
 25 county clerk and recorder in the state.

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

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

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

7 "15-7-306. Rules. The department of revenue may
 8 prescribe such rules as are reasonably necessary to
 9 facilitate and expedite the provisions and administration of
 10 this part, including rules for the imposition, collection,
 11 and administration of the tax imposed by [section 8]."

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

13 "15-7-307. Certificate -- exceptions. The certificate
 14 and tax imposed by this part shall do not apply to:

15 (1) an instrument recorded prior to July 1, 1975 1993;

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

19 ~~{3}--the sale of timberland when the land is used for~~
 20 ~~producing timber;~~

21 ~~{4}{3}~~ (3) the United States of America, this state, or any
 22 instrumentality, agency, or subdivision thereof;

23 ~~{5}{4}~~ (4) an instrument which that (without added
 24 consideration) confirms, corrects, modifies, or supplements
 25 a previously recorded instrument;

1 ~~(6)~~(5) a transfer pursuant to a court decree of
2 partition;

3 ~~(7)~~(6) a transfer pursuant to mergers, consolidations,
4 or reorganizations of corporations, partnerships, or other
5 business entities;

6 ~~(8)~~(7) a transfer by a subsidiary corporation to its
7 parent corporation without actual consideration or in sole
8 consideration of the cancellation or surrender of subsidiary
9 stock;

10 ~~(9)~~(8) a transfer of decedents' estates;

11 ~~(10)~~(9) a transfer of a gift;

12 ~~(11)~~(10) a transfer between husband and wife or parent
13 and child with only nominal actual consideration therefor
14 for the transfer;

15 ~~(12)~~(11) an instrument the effect of which is to
16 transfer the property to the same party or parties;

17 ~~(13)~~(12) a sale for delinquent taxes or assessments,
18 sheriff sale, bankruptcy action, or mortgage foreclosure;

19 ~~(14)~~(13) a transfer made in contemplation of death."

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

21 "15-7-310. **Penalty.** (1) A Except as otherwise provided
22 in subsection (2), a person convicted of violating any
23 provision of this part shall be fined an amount not to
24 exceed \$500 or be imprisoned in the county jail for any a
25 term not to exceed 6 months, or both.

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

6 **NEW SECTION. Section 8.** Imposition of tax. A tax at
7 the rate of 1% of the value in excess of \$50,000 declared in
8 the certificate required under 15-7-305 is imposed upon the
9 transfer of title to real property.

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

16 **NEW SECTION. Section 10.** Distribution of proceeds.
17 Within 30 days of the end of the preceding month, the county
18 treasurer shall forward to the state treasurer the amount of
19 the tax collected under [section 9] in the preceding month.
20 The state treasurer shall credit the amounts received under
21 this section to the state special revenue fund for state
22 equalization aid to the public schools of Montana as
23 described in 20-9-343.

24 **NEW SECTION. Section 11.** Credit for realty transfer
25 tax -- limitations. (1) There is allowed as a credit against

taxes imposed by 15-30-103 an amount equal to 50% of the realty transfer tax paid under [sections 8 and 9]. The maximum credit that a taxpayer may claim under this section is \$500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year that the realty transfer tax is paid.

(3) In order to be eligible for the credit under this section, the taxpayer must have been a resident of the state for at least 9 consecutive months preceding the realty transfer under the provisions of Title 15, chapter 7, part 3.

Section 12. Section 15-1-501, MCA, is amended to read:

"15-1-501. (Temporary) Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 62.8% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt

1 service account for long-range building program bonds as
2 described in 17-5-408;

3 (c) 28.5% of the taxes to the credit of the state
4 special revenue fund for state equalization aid to the
5 public schools of Montana as described in 20-9-343; and

6 (d) all interest and penalties to the credit of the
7 state general fund.

8 (4) The state treasurer shall also deposit to the
9 credit of the state general fund all money received by him
10 from the collection of license taxes, fees, and all net
11 revenues and receipts from all other sources under the
12 operation of the Montana Alcoholic Beverage Code.

13 (5) After the distribution provided for in 15-36-112,
14 the remainder of the oil severance tax collections must be
15 deposited in the general fund.

16 (6) All refunds of taxes must be attributed to the
17 funds in which the taxes are deposited. All refunds of
18 interest and penalties must be attributed to the funds in
19 which the interest and penalties are deposited.

20 15-1-501. (Effective July 1, 1993) Disposition of money
21 from certain designated license and other taxes. (1) The
22 state treasurer shall deposit to the credit of the state
23 general fund all money received by him from the collection
24 of:

25 (a) fees from driver's licenses, motorcycle

1 endorsements, and duplicate driver's licenses as provided in
2 61-5-121;

3 (b) electrical energy producer's license taxes under
4 chapter 51;

5 (c) severance taxes allocated to the general fund under
6 chapter 36;

7 (d) liquor license taxes under Title 16;

8 (e) telephone company license taxes under chapter 53;
9 and

10 (f) inheritance and estate taxes under Title 72,
11 chapter 16.

12 (2) All money received from the collection of income
13 taxes under chapter 30 of this title must be deposited as
14 follows:

15 (a) 59.5% of the taxes to the credit of the state
16 general fund;

17 (b) 8.7% of the taxes to the credit of the debt service
18 account for long-range building program bonds as described
19 in 17-5-408;

20 (c) 31.8% of the taxes to the credit of the state
21 special revenue fund for state equalization aid to the
22 public schools of Montana as described in 20-9-343; and

23 (d) all interest and penalties to the credit of the
24 state general fund.

25 (3) All money received from the collection of

1 corporation license and income taxes under chapter 31 of
2 this title, except as provided in 15-31-702, must be
3 deposited as follows:

4 (a) 61% of the taxes to the credit of the state general
5 fund;

6 (b) 10.5% of the taxes to the credit of the debt
7 service account for long-range building program bonds as
8 described in 17-5-408;

9 (c) 28.5% of the taxes to the credit of the state
10 special revenue fund for state equalization aid to the
11 public schools of Montana as described in 20-9-343; and

12 (d) all interest and penalties to the credit of the
13 state general fund.

14 (4) The state treasurer shall also deposit to the
15 credit of the state general fund all money received by him
16 from the collection of license taxes, fees, and all net
17 revenues and receipts from all other sources under the
18 operation of the Montana Alcoholic Beverage Code.

19 (5) After the distribution provided for in 15-36-112,
20 the remainder of the oil severance tax collections must be
21 deposited in the general fund.

22 (6) All money received from the collection of the
23 realty transfer tax under [section 9] must be deposited to
24 the credit of the state special revenue fund for state
25 equalization aid to the public schools of Montana as

1 described in 20-9-343.

2 ~~(6)~~(7) All refunds of taxes must be attributed to the
3 funds in which the taxes are deposited. All refunds of
4 interest and penalties must be attributed to the funds in
5 which the interest and penalties are deposited."

6 **Section 13.** Section 20-9-343, MCA, is amended to read:

7 "20-9-343. (Temporary) Definition of and revenue for
8 state equalization aid. (1) As used in this title, the term
9 "state equalization aid" means the money deposited in the
10 state special revenue fund as required in this section plus
11 any legislative appropriation of money from other sources
12 for:

13 (a) distribution to the public schools for the payment
14 of guaranteed tax base aid and for equalization of the
15 foundation program;

16 (b) the Montana educational telecommunications network
17 as provided in 20-32-101; and

18 (c) filing fees for school district audits as required
19 by 2-7-514(2).

20 (2) The superintendent of public instruction may spend
21 funds appropriated for state equalization aid, as required
22 by subsections (1)(a) and (1)(b), throughout the biennium.

23 (3) The following must be paid into the state special
24 revenue fund for state equalization aid to public schools of
25 the state:

1 (a) money received from the collection of income taxes
2 under chapter 30 of Title 15, as provided by 15-1-501;

3 (b) except as provided in 15-31-702, money received
4 from the collection of corporation license and income taxes
5 under chapter 31 of Title 15, as provided by 15-1-501;

6 (c) money allocated to state equalization from the
7 collection of the severance tax on coal;

8 (d) money received from the treasurer of the United
9 States as the state's shares of oil, gas, and other mineral
10 royalties under the federal Mineral Lands Leasing Act, as
11 amended;

12 (e) interest and income money described in 20-9-341 and
13 20-9-342;

14 (f) money received from the state equalization aid levy
15 under 20-9-360;

16 (g) income from the lottery, as provided in 23-7-402;

17 (h) the surplus revenues collected by the counties for
18 foundation program support according to 20-9-331 and
19 20-9-333;

20 (i) investment income earned by investing money in the
21 state equalization aid account in the state special revenue
22 fund; and

23 (j) 15% of the income and earnings of all coal
24 severance tax funds as provided in 17-5-704.

25 (4) The superintendent of public instruction shall

1 request the board of investments to invest the money in the
2 state equalization aid account to maximize investment
3 earnings to the account.

4 (5) Any surplus revenue in the state equalization aid
5 account in the second year of a biennium may be used to
6 reduce any appropriation required for the next succeeding
7 biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L.
8 1991.)

9 20-9-343. (Effective July 1, 1993) Definition of and
10 revenue for state equalization aid. (1) As used in this
11 title, the term "state equalization aid" means the money
12 deposited in the state special revenue fund as required in
13 this section plus any legislative appropriation of money
14 from other sources for distribution to the public schools
15 for the purposes of payment of guaranteed tax base aid and
16 equalization of the foundation program and for the Montana
17 educational telecommunications network as provided in
18 20-32-101.

19 (2) The superintendent of public instruction may spend
20 funds appropriated for state equalization aid as required
21 for the purposes of guaranteed tax base aid, the foundation
22 program, and the Montana educational telecommunications
23 network, throughout the biennium.

24 (3) The following must be paid into the state special
25 revenue fund for state equalization aid to public schools of

the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704; and

(k) money received from the realty transfer tax, as provided in [section 10].

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

NEW SECTION. Section 14. Codification instruction. (1) [Sections 8 through 10] are intended to be codified as an integral part of Title 15, chapter 7, part 3, and the provisions of Title 15, chapter 7, part 3, apply to [sections 8 through 10].

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

NEW SECTION. Section 15. Effective date -- applicability. [This act] is effective July 1, 1993, and applies to realty transfers occurring on or after July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0436, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a realty transfer tax on certain transfers of real property at the rate of 1 percent of the value recorded on the realty transfer certificate; depositing the proceeds of the tax in the school equalization aid account; allowing a credit against individual income tax liability for Montana residents for a portion of the realty transfer tax; and providing an effective date and an applicability date.

ASSUMPTIONS:

1. In a calendar year the value of all non-agricultural real property transferred in the state is estimated to be \$1.7 billion. The estimates included in this fiscal note will pertain to the transfer of non-agricultural property only. Data on the value of agricultural and timber property does not exist since these transactions are exempt from listing a sale value on the realty transfer certificate.
2. For each transaction, only value in excess of \$50,000 is subject to the 1% realty transfer tax; this reduces the taxable portion of the total \$1.7 billion by two-thirds.
3. Of the value subject to the 1% realty transfer tax, it is assumed that one-third involves non-residents or non-individual (corporate) sales. The remaining two-thirds involves individuals that would receive an income tax credit equal to 50% of the realty transfer tax (maximum \$500 credit).
4. The proposal is effective July 1, 1993.

FISCAL IMPACT:Revenues:

The realty transfer tax will generate \$5.7 million for the school equalization account in each fiscal year of the biennium. The individual income tax credit will result in reductions of \$302,100 and \$604,200 for the school equalization account in FY94 and FY95 respectively. The individual income tax credit also results in reductions to the general fund (GF) and long range building fund (LRB).

Net Gain to School Equalization Account:

	<u>FY94</u>	<u>FY95</u>
Realty Transfer Tax	\$ 5,700,000	\$ 5,700,000
School Foundation	<u>(302,100)</u>	<u>(604,200)</u>
Net Gain	\$ 5,697,900	\$ 5,095,800

(Over)

David Lewis 3-29-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

3/26/93
JUDY JACOBSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0436, as introduced

SB 436

FISCAL IMPACT: (continued)

Impact to the General Fund and Long Range Building Fund:

	<u>FY94</u>	<u>FY95</u>
General Fund	\$ (565,300)	\$ (1,130,600)
Long Range Building Fund	<u>(82,600)</u>	<u>(165,200)</u>
Net Gain	\$ (647,900)	\$ (1,295,800)

Expenditures: (Department of Revenue)

Property Valuation Division

Implementation of this proposal would require additional total administrative expenses of \$4,500 in each fiscal year.

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	398.66	398.66	0.00	398.66	398.66	0.00
Personal Services	\$ 11,885,655	\$ 11,885,655	\$ 0	\$ 11,913,545	\$ 11,913,545	\$ 0
Operating Expenses	2,180,406	2,184,906	4,500	2,192,109	2,196,609	4,500
Equipment	222,278	222,278	0	205,648	205,648	0
Debt Service	<u>269,800</u>	<u>269,800</u>	<u>0</u>	<u>269,800</u>	<u>269,800</u>	<u>0</u>
Total	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,102	\$ 14,585,602	\$ 4,500
General Fund	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,10	\$ 14,585,602	\$ 4,500

Income Tax Division

Implementation of this proposal would require additional total administrative expenses of \$22,000 in FY94 and \$2,750 in FY95.

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	123.45	123.45	0	123.45	123.45	0
Personal Services	\$ 3,296,520	\$3,296,520	\$0	\$ 3,305,267	\$3,305,267	\$0
Operating Expenses	1,424,031	1,446,031	22,000	1,390,128	1,392,878	2,750
Equipment	<u>72,561</u>	<u>72,561</u>	<u>0</u>	<u>52,971</u>	<u>52,971</u>	<u>0</u>
Total	\$ 4,793,112	\$4,815,112	\$22,000	\$ 4,748,366	\$4,751,116	\$2,750
General Fund	\$ 4,298,112	\$4,320,112	\$22,000	\$ 4,238,366	\$4,241,112	\$2,750
State Special	<u>495,000</u>	<u>495,000</u>	<u>0</u>	<u>510,000</u>	<u>510,000</u>	<u>0</u>
Total	\$ 4,793,122	\$4,815,112	\$22,000	\$ 4,748,366	\$4,751,116	\$2,750

(continued next page)

FISCAL IMPACT: (continued)

Data Processing Division

Implementation of this proposal would require additional total administrative expenses of \$21,490 in each fiscal year.

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	49.60	49.60	0	49.60	49.60	0
Personal Services	\$ 1,515,949	\$1,515,949	\$0	\$ 1,520,006	\$1,520,006	\$0
Operating Expenses	146,395	167,885	21,490	143,406	164,896	21,490
Equipment	<u>13,578</u>	<u>13,578</u>	<u>0</u>	<u>12,691</u>	<u>12,691</u>	<u>0</u>
Total	\$ 1,675,922	\$1,697,412	\$21,490	\$ 1,676,103	\$1,697,593	\$21,490
General Fund	\$ 1,046,610	\$1,068,100	\$21,490	\$ 1,046,902	\$1,068,392	\$21,490
State Special	85,313	85,313	0	86,505	86,505	0
Federal	<u>543,999</u>	<u>543,999</u>	<u>0</u>	<u>542,696</u>	<u>542,696</u>	<u>0</u>
Total	\$ 1,675,922	\$1,697,412	\$21,490	\$ 1,676,103	\$1,697,593	\$21,490

TECHNICAL NOTES:

The proposal does not expressly say who must pay the tax. The tax appears to be on the person presenting the RTC for recordation. This could be the seller, buyer, the bank or their agents.

SB436

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0436, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a realty transfer tax on certain transfers of real property at the rate of 1 percent of the value recorded on the realty transfer certificate; depositing the proceeds of the tax in the school equalization aid account; and providing an effective date and an applicability date.

ASSUMPTIONS:

1. In a calendar year the value of all non-agricultural real property transferred in the state is estimated to be \$1.7 billion. The estimates included in this fiscal note will pertain to the transfer of non-agricultural property only. Data on the value of agricultural and timber property does not exist since these transactions are exempt from listing a sale value on the realty transfer certificate.
2. For each transaction, only value in excess of \$50,000 is subject to the 1% realty transfer tax; this reduces the taxable portion of the total \$1.7 billion by two-thirds.
3. The proposal is effective July 1, 1993.

FISCAL IMPACT:Revenues:

The realty transfer tax will generate \$5.7 million for the school equalization account in each fiscal year of the biennium.

Expenditures: Department of Revenue, Property Valuation Division

Implementation of this proposal would require additional total administrative expenses of \$4,500 in each fiscal year.

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	398.66	398.66	0.00	398.66	398.66	0.00
Personal Services	\$ 11,885,655	\$ 11,885,655	\$ 0	\$ 11,913,545	\$ 11,913,545	\$ 0
Operating Expenses	2,180,406	2,184,906	4,500	2,192,109	2,196,609	4,500
Equipment	222,278	222,278	0	205,648	205,648	0
Debt Service	269,800	269,800	0	269,800	269,800	0
Total	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,102	\$ 14,585,602	\$ 4,500
General Fund	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,10	\$ 14,585,602	\$ 4,500

David Lewis 3-29-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Judy Jacobson 3/29/93
JUDY JACOBSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0436, second reading

SB 436 #2

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 436

INTRODUCED BY JACOBSON, VAN VALKENBURG, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY TRANSFER TAX ON CERTAIN TRANSFERS OF REAL PROPERTY AT THE RATE OF 1 PERCENT OF THE VALUE RECORDED ON THE REALTY TRANSFER CERTIFICATE; DEPOSITING THE PROCEEDS OF THE TAX IN THE SCHOOL EQUALIZATION AID ACCOUNT; ~~ALLOWING--A--CREDIT AGAINST---INDIVIDUAL---INCOME---TAX--LIABILITY--FOR--MONTANA RESIDENTS-FOR-A-PORTION-OF-THE-REALTY-TRANSFER-TAX;~~ AMENDING SECTIONS 15-1-501, 15-7-301, 15-7-302, 15-7-303, 15-7-305, 15-7-306, 15-7-307, 15-7-308, 15-7-310, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-7-301, MCA, is amended to read:

"15-7-301. Short title. This part may be cited as the "Realty Transfer and Tax Act"."

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

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

(1) impose a tax on the transfer of real property and to provide for the distribution of the proceeds from the tax to the state school equalization aid account; and

(2) obtain sales price data necessary to the determination of statewide levels and uniformity of real

estate assessments by the most efficient, economical, and reliable method."

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

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

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

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

(3) "Real estate" and "real property" ~~includes include:~~

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

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

(5) "Value" means:

(a) in the case of a transfer of interest in real property, other than a gift-or--a NONARM'S-LENGTH transfer with--nominal--consideration or A TRANSFER without stated consideration, the amount of the full actual consideration therefor paid or to be paid, including the amount of any

lien or liens thereon on the real property; or

(b) in the case of a gift or NONARM'S-LENGTH TRANSFER OR a transfer with nominal consideration or without stated consideration, the estimated price the real property would bring in an open market and under the current prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the real property and the current prevailing market conditions MARKET VALUE AS DESCRIBED IN 15-8-111(2)(A)."

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

"15-7-305. Realty transfer certificate required. (1)

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

(2) No An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate has been received by the county clerk and recorder and the tax imposed by [section 8 9] has been paid. The validity or effectiveness of an instrument or deed as between the parties to it shall is not be affected by the failure to comply with the provisions in this part.

(3) The form of the certificate shall must be prescribed by the department of revenue, and the department shall provide an adequate supply of such forms to each

county clerk and recorder in the state.

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

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

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

"15-7-306. Rules. The department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this part, including rules for the imposition, collection, and administration of the tax imposed by [section 8 9]."

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

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

(1) an instrument recorded prior to July 1, ~~1975~~ 1993;

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

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

~~(4)~~ (3) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

~~(5)~~ (4) an instrument which that (without added consideration) confirms, corrects, modifies, or supplements

1 a previously recorded instrument;

2 ~~(6)~~(5) a transfer pursuant to a court decree of

3 partition;

4 ~~(7)~~(6) a transfer pursuant to mergers, consolidations,

5 or reorganizations of corporations, partnerships, or other

6 business entities;

7 ~~(8)~~(7) a transfer by a subsidiary corporation to its

8 parent corporation without actual consideration or in sole

9 consideration of the cancellation or surrender of subsidiary

10 stock;

11 ~~(9)~~(8) a transfer of decedents' estates;

12 ~~(10)~~(9) a transfer of a gift;

13 ~~(11)~~(10) a transfer between husband and wife or parent

14 and child with only nominal actual consideration therefor

15 for the transfer;

16 ~~(12)~~(11) an instrument the effect of which is to

17 transfer the property to the same party or parties;

18 ~~(13)~~(12) a sale for delinquent taxes or assessments,

19 sheriff sale, bankruptcy action, or mortgage foreclosure;

20 ~~(14)~~(13) a transfer made in contemplation of death."

21 **SECTION 7. SECTION 15-7-308, MCA, IS AMENDED TO READ:**

22 "15-7-308. Disclosure of information restricted. The

23 certificate required by this part and the information

24 therein shall contained in the certificate and the tax due

25 under this part are not be-a public record records and shall

1 must be held confidential by the county clerk and recorder,

2 county assessor, county treasurer, and department of

3 revenue. This is because the legislature finds that the

4 demands of individual privacy outweigh the merits of public

5 disclosure. The foregoing provisions shall not apply to

6 compilations from such certificates or to summaries,

7 analyses, and evaluations based upon such compilations."

8 **Section 8. Section 15-7-310, MCA, is amended to read:**

9 "15-7-310. Penalty. ~~(1) A Except-as-otherwise-provided~~

10 ~~in-subsection-(2)-a~~ A person convicted of violating any

11 provision of this part shall be fined an amount not to

12 exceed \$500 or be imprisoned in the county jail for any a

13 term not to exceed 6 months, or both.

14 ~~(2) A person convicted--of falsifying the value of~~

15 ~~transferred real estate on the certificate required under~~

16 ~~15-7-305 shall be-fined-an-amount-not-to-exceed~~ PAY A CIVIL

17 ~~PENALTY OF \$1,000 or-be-imprisoned-in-the-county-jail-for--a~~

18 ~~term--not--to--exceed-1-year,--or-both, for each offense. THE~~

19 ~~DEPARTMENT OF REVENUE SHALL ENFORCE THE CIVIL PENALTY UNDER~~

20 ~~THIS SUBSECTION."~~

21 **NEW SECTION. Section 9. Imposition of tax.** A tax at

22 the rate of 1% of the value in excess of \$50,000 declared in

23 the certificate required under 15-7-305 is imposed upon the

24 transfer of title to real property. THE TAX IS ON THE PERSON

25 SEEKING TO RECORD THE TRANSFER OF TITLE TO THE PROPERTY. THE

PERSON HAS THE BURDEN OF CLAIMING AND DEMONSTRATING THE RIGHT TO ANY EXEMPTION TO THE TAX PROVIDED IN 15-7-307 PRIOR TO RECORDING THE TRANSFER.

NEW SECTION. Section 10. Collection of tax -- APPEALS -- INTEREST AND PENALTY -- STATUTE OF LIMITATIONS -- LIEN ON TRANSFERRED PROPERTY. (1) Before a deed or instrument evidencing a transfer of title subject to the tax imposed by [section 8 9] may be recorded, the treasurer of the county where the property or any portion of the property is located shall calculate and collect the amount of tax due.

(2) IF THE TAXPAYER CONTESTS THE TAX ASSESSMENT OR THE DENIAL OF AN EXEMPTION FROM THE TAX BY THE TREASURER, THE TAXPAYER MAY APPEAL THE TAX ASSESSMENT OR THE DENIAL OF THE EXEMPTION TO THE DEPARTMENT OF REVENUE. THE APPEAL IS GOVERNED BY THE PROVISIONS OF 15-1-211.

(3) IF THE TREASURER DETERMINES THAT THE AMOUNT OF TAX DUE IS GREATER THAN THE AMOUNT COLLECTED, THE TREASURER SHALL MAIL TO THE TAXPAYER A NOTICE, PURSUANT TO 15-1-211, OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED. A PENALTY OF 10% OF THE UNPAID TAX MUST BE ASSESSED. IN ADDITION, ANY DEFICIENCY ASSESSMENT BEARS INTEREST UNTIL PAID AT THE RATE OF 1% A MONTH OR FRACTION OF A MONTH, COMPUTED FROM THE DATE THE TRANSFER WAS RECORDED.

(4) THE TAXPAYER MAY SEEK A REVIEW OF THE DETERMINATION BY THE DEPARTMENT PURSUANT TO 15-1-211.

(5) THE DEFICIENCY MAY NOT BE ASSESSED UNLESS NOTICE OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM THE DATE THE TRANSFER WAS RECORDED. IF THE CERTIFICATE FILED IS FRAUDULENT, THE 5-YEAR PERIOD DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD.

(6) THE TREASURER MAY COLLECT ANY ADDITIONAL TAX, PENALTY, AND INTEREST PURSUANT TO 15-16-113.

(7) THE ADDITIONAL TAX, PENALTY, AND INTEREST ARE A LIEN AGAINST THE REAL PROPERTY THAT WAS TRANSFERRED AND MAY BE COLLECTED AND ENFORCED IN THE MANNER AS OTHER TAX LIENS ON REAL PROPERTY ARE ENFORCED. THE USE OF ONE METHOD OF COLLECTION DOES NOT PRECLUDE THE USE OF AN ALTERNATIVE METHOD OF COLLECTION.

NEW SECTION. Section 11. Distribution of proceeds. Within 30 days of the end of the preceding month, the county treasurer shall forward to the state treasurer the amount of the tax collected under [section 9 10] in the preceding month. The state treasurer shall credit the amounts received under this section to the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

~~NEW-SECTION--Section 11--Credit--for--realty--transfer--tax---limitations--(1)--There-is-allowed-as-a-credit-against-taxes-imposed-by-15-30-103-an-amount-equal--to--50%--of--the-realty--transfer--tax--paid--under--(sections--8-and-9)--The~~

~~maximum credit that a taxpayer may claim under this section is \$500. The credit allowed under this section may not exceed the taxpayer's income tax liability.~~

~~{2} There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year that the realty transfer tax is paid.~~

~~{3} In order to be eligible for the credit under this section, the taxpayer must have been a resident of the state for at least 9 consecutive months preceding the realty transfer under the provisions of Title 15, chapter 7, part 3.~~

Section 12. Section 15-1-501, MCA, is amended to read:

"15-1-501. (Temporary) Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53;

and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 62.8% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited.

15-1-501. (Effective July 1, 1993) Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 59.5% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be

deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All money received from the collection of the realty transfer tax under [section 9 10] must be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

~~(6)~~(7) All refunds of taxes must be attributed to the

funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited."

Section 13. Section 20-9-343, MCA, is amended to read:

"20-9-343. (Temporary) Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment

earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L. 1991.)

20-9-343. (Effective July 1, 1993) Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program and for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes

under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

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(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704; and

(k) money received from the realty transfer tax, as provided in [section 10 11].

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

NEW SECTION. Section 14. Codification instruction. "[1] [Sections 8 9 through 10 11] are intended to be codified as an integral part of Title 15, chapter 7, part 3, and the provisions of Title 15, chapter 7, part 3, apply to [sections 8 9 through 10 11].

~~{2}--{Section--11}--is--intended--to--be--codified--as--an integral-part-of-Title-15,--chapter--30,--part--1,--and--the provisions--of--Title--15,--chapter--30,--part--1,--apply-to {section-11}.~~

NEW SECTION. Section 15. Effective date -- applicability. [This act] is effective July 1, 1993, and applies to realty transfers occurring on or after July 1, 1993.

-End-

SENATE BILL NO. 436

INTRODUCED BY JACOBSON, VAN VALKENBURG, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY TRANSFER TAX ON CERTAIN TRANSFERS OF REAL PROPERTY AT THE RATE OF 1 PERCENT OF THE VALUE RECORDED ON THE REALTY TRANSFER CERTIFICATE; DEPOSITING THE PROCEEDS OF THE TAX IN THE SCHOOL EQUALIZATION AID ACCOUNT; ~~ALLOWING--A--CREDIT AGAINST--INDIVIDUAL--INCOME--TAX--LIABILITY--FOR--MONTANA RESIDENTS--FOR--A--PORTION--OF--THE--REALTY--TRANSFER--TAX;~~ AMENDING SECTIONS 15-1-501, 15-7-301, 15-7-302, 15-7-303, 15-7-305, 15-7-306, 15-7-307, 15-7-308, 15-7-310, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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(1) impose a tax on the transfer of real property and to provide for the distribution of the proceeds from the tax to the state school equalization aid account; and

(2) obtain sales price data necessary to the determination of statewide levels and uniformity of real

estate assessments by the most efficient, economical, and reliable method."

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(3) "Real estate" and "real property" ~~includes include:~~

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

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

(5) "Value" means:

(a) in the case of a transfer of interest in real property, other than a gift--or--a NONARM'S-LENGTH transfer with--nominal--consideration or A TRANSFER without stated consideration, the amount of the full actual consideration therefor paid or to be paid, including the amount of any

lien or liens thereon on the real property; or

(b) in the case of a gift or ~~NONARM'S-LENGTH TRANSFER~~
OR a transfer with nominal consideration or without stated
consideration, the estimated price the real property would
bring in an open market and under the current prevailing
market conditions in a sale between a willing seller and a
willing buyer, both conversant with the real property and
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representatives a certificate declaring the consideration
paid or to be paid for the real estate transferred.

(2) No An instrument or deed evidencing a transfer of
real estate may not be accepted for recordation until the
certificate has been received by the county clerk and
recorder and the tax imposed by [section 8 9] has been paid.
The validity or effectiveness of an instrument or deed as
between the parties to it shall is not be affected by the
failure to comply with the provisions in this part.

(3) The form of the certificate shall must be
prescribed by the department of revenue, and the department
shall provide an adequate supply of such forms to each

county clerk and recorder in the state.

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certificate for each contract for deed filed for recording.

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each executed certificate to the department and one copy to
the county assessor."

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and administration of the tax imposed by [section 8 9]."

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

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

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

~~(4)~~ (3) the United States of America, this state, or any
instrumentality, agency, or subdivision thereof;

~~(5)~~ (4) an instrument which that (without added
consideration) confirms, corrects, modifies, or supplements

1 a previously recorded instrument;

2 ~~(6)~~(5) a transfer pursuant to a court decree of
3 partition;

4 ~~(7)~~(6) a transfer pursuant to mergers, consolidations,
5 or reorganizations of corporations, partnerships, or other
6 business entities;

7 ~~(8)~~(7) a transfer by a subsidiary corporation to its
8 parent corporation without actual consideration or in sole
9 consideration of the cancellation or surrender of subsidiary
10 stock;

11 ~~(9)~~(8) a transfer of decedents' estates;

12 ~~(10)~~(9) a transfer of a gift;

13 ~~(11)~~(10) a transfer between husband and wife or parent
14 and child with only nominal actual consideration therefor
15 for the transfer;

16 ~~(12)~~(11) an instrument the effect of which is to
17 transfer the property to the same party or parties;

18 ~~(13)~~(12) a sale for delinquent taxes or assessments,
19 sheriff sale, bankruptcy action, or mortgage foreclosure;

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22 "15-7-308. Disclosure of information restricted. The
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24 therein shall contained in the certificate and the tax due
25 under this part are not be a public record records and shall

1 must be held confidential by the county clerk and recorder,
2 county assessor, county treasurer, and department of
3 revenue. This is because the legislature finds that the
4 demands of individual privacy outweigh the merits of public
5 disclosure. The foregoing provisions shall not apply to
6 compilations from such certificates or to summaries,
7 analyses, and evaluations based upon such compilations."

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9 "15-7-310. Penalty. (1) A Except-as-otherwise-provided
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11 provision of this part shall be fined an amount not to
12 exceed \$500 or be imprisoned in the county jail for any a
13 term not to exceed 6 months, or both.

14 (2) A person convicted--of falsifying the value of
15 transferred real estate on the certificate required under
16 15-7-305 shall be-fined-an-amount-not-to-exceed PAY A CIVIL
17 PENALTY OF \$1,000 or-be-imprisoned-in-the-county-jail-for--a
18 term--not--to--exceed-1-year,or-both, for each offense. THE
19 DEPARTMENT OF REVENUE SHALL ENFORCE THE CIVIL PENALTY UNDER
20 THIS SUBSECTION."

21 **NEW SECTION. Section 9. Imposition of tax. A tax at**
22 **the rate of 1% of the value in excess of \$50,000 declared in**
23 **the certificate required under 15-7-305 is imposed upon the**
24 **transfer of title to real property. THE TAX IS ON THE PERSON**
25 **SEEKING TO RECORD THE TRANSFER OF TITLE TO THE PROPERTY. THE**

PERSON HAS THE BURDEN OF CLAIMING AND DEMONSTRATING THE RIGHT TO ANY EXEMPTION TO THE TAX PROVIDED IN 15-7-307 PRIOR TO RECORDING THE TRANSFER.

NEW SECTION. Section 10. Collection of tax -- APPEALS -- INTEREST AND PENALTY -- STATUTE OF LIMITATIONS -- LIEN ON TRANSFERRED PROPERTY. (1) Before a deed or instrument evidencing a transfer of title subject to the tax imposed by [section 8 9] may be recorded, the treasurer of the county where the property or any portion of the property is located shall calculate and collect the amount of tax due.

(2) IF THE TAXPAYER CONTESTS THE TAX ASSESSMENT OR THE DENIAL OF AN EXEMPTION FROM THE TAX BY THE TREASURER, THE TAXPAYER MAY APPEAL THE TAX ASSESSMENT OR THE DENIAL OF THE EXEMPTION TO THE DEPARTMENT OF REVENUE. THE APPEAL IS GOVERNED BY THE PROVISIONS OF 15-1-211.

(3) IF THE TREASURER DETERMINES THAT THE AMOUNT OF TAX DUE IS GREATER THAN THE AMOUNT COLLECTED, THE TREASURER SHALL MAIL TO THE TAXPAYER A NOTICE, PURSUANT TO 15-1-211, OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED. A PENALTY OF 10% OF THE UNPAID TAX MUST BE ASSESSED. IN ADDITION, ANY DEFICIENCY ASSESSMENT BEARS INTEREST UNTIL PAID AT THE RATE OF 1% A MONTH OR FRACTION OF A MONTH, COMPUTED FROM THE DATE THE TRANSFER WAS RECORDED.

(4) THE TAXPAYER MAY SEEK A REVIEW OF THE DETERMINATION BY THE DEPARTMENT PURSUANT TO 15-1-211.

(5) THE DEFICIENCY MAY NOT BE ASSESSED UNLESS NOTICE OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM THE DATE THE TRANSFER WAS RECORDED. IF THE CERTIFICATE FILED IS FRAUDULENT, THE 5-YEAR PERIOD DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD.

(6) THE TREASURER MAY COLLECT ANY ADDITIONAL TAX, PENALTY, AND INTEREST PURSUANT TO 15-16-113.

(7) THE ADDITIONAL TAX, PENALTY, AND INTEREST ARE A LIEN AGAINST THE REAL PROPERTY THAT WAS TRANSFERRED AND MAY BE COLLECTED AND ENFORCED IN THE MANNER AS OTHER TAX LIENS ON REAL PROPERTY ARE ENFORCED. THE USE OF ONE METHOD OF COLLECTION DOES NOT PRECLUDE THE USE OF AN ALTERNATIVE METHOD OF COLLECTION.

NEW SECTION. Section 11. Distribution of proceeds. Within 30 days of the end of the preceding month PURSUANT TO 15-1-504, the county treasurer shall forward to the state treasurer the amount of the tax collected under [section 9 10] in the preceding month. The state treasurer shall credit the amounts received under this section to the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

~~NEW SECTION. Section 11. Credit for realty transfer tax limitations. (1) There is allowed as a credit against taxes imposed by 15-30-103 an amount equal to 50% of the realty transfer tax paid under (sections 8 and 9). The~~

~~maximum credit that a taxpayer may claim under this section is \$500. The credit allowed under this section may not exceed the taxpayer's income tax liability.~~

~~(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year that the realty transfer tax is paid.~~

~~(3) In order to be eligible for the credit under this section, the taxpayer must have been a resident of the state for at least 9 consecutive months preceding the realty transfer under the provisions of Title 15, chapter 7, part 9.~~

Section 12. Section 15-1-501, MCA, is amended to read:

"15-1-501. (Temporary) Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53;

and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 62.8% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

1 (c) 28.5% of the taxes to the credit of the state
2 special revenue fund for state equalization aid to the
3 public schools of Montana as described in 20-9-343; and

4 (d) all interest and penalties to the credit of the
5 state general fund.

6 (4) The state treasurer shall also deposit to the
7 credit of the state general fund all money received by him
8 from the collection of license taxes, fees, and all net
9 revenues and receipts from all other sources under the
10 operation of the Montana Alcoholic Beverage Code.

11 (5) After the distribution provided for in 15-36-112,
12 the remainder of the oil severance tax collections must be
13 deposited in the general fund.

14 (6) All refunds of taxes must be attributed to the
15 funds in which the taxes are deposited. All refunds of
16 interest and penalties must be attributed to the funds in
17 which the interest and penalties are deposited.

18 15-1-501. (Effective July 1, 1993) Disposition of money
19 from certain designated license and other taxes. (1) The
20 state treasurer shall deposit to the credit of the state
21 general fund all money received by him from the collection
22 of:

23 (a) fees from driver's licenses, motorcycle
24 endorsements, and duplicate driver's licenses as provided in
25 61-5-121;

1 (b) electrical energy producer's license taxes under
2 chapter 51;

3 (c) severance taxes allocated to the general fund under
4 chapter 36;

5 (d) liquor license taxes under Title 16;

6 (e) telephone company license taxes under chapter 53;
7 and

8 (f) inheritance and estate taxes under Title 72,
9 chapter 16.

10 (2) All money received from the collection of income
11 taxes under chapter 30 of this title must be deposited as
12 follows:

13 (a) 59.5% of the taxes to the credit of the state
14 general fund;

15 (b) 8.7% of the taxes to the credit of the debt service
16 account for long-range building program bonds as described
17 in 17-5-408;

18 (c) 31.8% of the taxes to the credit of the state
19 special revenue fund for state equalization aid to the
20 public schools of Montana as described in 20-9-343; and

21 (d) all interest and penalties to the credit of the
22 state general fund.

23 (3) All money received from the collection of
24 corporation license and income taxes under chapter 31 of
25 this title, except as provided in 15-31-702, must be

1 deposited as follows:

2 (a) 61% of the taxes to the credit of the state general
3 fund;

4 (b) 10.5% of the taxes to the credit of the debt
5 service account for long-range building program bonds as
6 described in 17-5-408;

7 (c) 28.5% of the taxes to the credit of the state
8 special revenue fund for state equalization aid to the
9 public schools of Montana as described in 20-9-343; and

10 (d) all interest and penalties to the credit of the
11 state general fund.

12 (4) The state treasurer shall also deposit to the
13 credit of the state general fund all money received by him
14 from the collection of license taxes, fees, and all net
15 revenues and receipts from all other sources under the
16 operation of the Montana Alcoholic Beverage Code.

17 (5) After the distribution provided for in 15-36-112,
18 the remainder of the oil severance tax collections must be
19 deposited in the general fund.

20 (6) All money received from the collection of the
21 realty transfer tax under [section 9 10] must be deposited
22 to the credit of the state special revenue fund for state
23 equalization aid to the public schools of Montana as
24 described in 20-9-343.

25 ~~(6)(7)~~ All refunds of taxes must be attributed to the

1 funds in which the taxes are deposited. All refunds of
2 interest and penalties must be attributed to the funds in
3 which the interest and penalties are deposited."

4 **Section 13.** Section 20-9-343, MCA, is amended to read:

5 "20-9-343. (Temporary) Definition of and revenue for
6 state equalization aid. (1) As used in this title, the term
7 "state equalization aid" means the money deposited in the
8 state special revenue fund as required in this section plus
9 any legislative appropriation of money from other sources
10 for:

11 (a) distribution to the public schools for the payment
12 of guaranteed tax base aid and for equalization of the
13 foundation program;

14 (b) the Montana educational telecommunications network
15 as provided in 20-32-101; and

16 (c) filing fees for school district audits as required
17 by 2-7-514(2).

18 (2) The superintendent of public instruction may spend
19 funds appropriated for state equalization aid, as required
20 by subsections (1)(a) and (1)(b), throughout the biennium.

21 (3) The following must be paid into the state special
22 revenue fund for state equalization aid to public schools of
23 the state:

24 (a) money received from the collection of income taxes
25 under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment

earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L. 1991.)

20-9-343. (Effective July 1, 1993) Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program and for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes

1 under chapter 30 of Title 15, as provided by 15-1-501;
 2 (b) except as provided in 15-31-702, money received
 3 from the collection of corporation license and income taxes
 4 under chapter 31 of Title 15, as provided by 15-1-501;
 5 (c) money allocated to state equalization from the
 6 collection of the severance tax on coal;
 7 (d) money received from the treasurer of the United
 8 States as the state's shares of oil, gas, and other mineral
 9 royalties under the federal Mineral Lands Leasing Act, as
 10 amended;
 11 (e) interest and income money described in 20-9-341 and
 12 20-9-342;
 13 (f) money received from the state equalization aid levy
 14 under 20-9-360;
 15 (g) income from the lottery, as provided in 23-7-402;
 16 (h) the surplus revenues collected by the counties for
 17 foundation program support according to 20-9-331 and
 18 20-9-333;
 19 (i) investment income earned by investing money in the
 20 state equalization aid account in the state special revenue
 21 fund; and
 22 (j) 15% of the income and earnings of all coal
 23 severance tax funds as provided in 17-5-704; and
 24 (k) money received from the realty transfer tax, as
 25 provided in [section 10 11].

1 (4) The superintendent of public instruction shall
 2 request the board of investments to invest the money in the
 3 state equalization aid account to maximize investment
 4 earnings to the account.

5 (5) Any surplus revenue in the state equalization aid
 6 account in the second year of a biennium may be used to
 7 reduce any appropriation required for the next succeeding
 8 biennium."

9 NEW SECTION. Section 14. Codification instruction. [1]
 10 [Sections 8 9 through 10 11] are intended to be codified as
 11 an integral part of Title 15, chapter 7, part 3, and the
 12 provisions of Title 15, chapter 7, part 3, apply to
 13 [sections 8 9 through 10 11].

14 ~~{2}--{Section--11}--is--intended--to--be--codified--as--an~~
 15 ~~integral--part--of--Title--15,--chapter--30,--part--1,--and--the~~
 16 ~~provisions--of--Title--15,--chapter--30,--part--1,--apply--to~~
 17 ~~{section--11}.~~

18 NEW SECTION. Section 15. Effective date --
 19 applicability. [This act] is effective July 1, 1993, and
 20 applies to realty transfers occurring on or after July 1,
 21 1993.

-End-