HOUSE BILL 42

Introduced by Mills

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12/01	Fiscal Note Requested
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House BILL NO. 42

INTRODUCED BY Norm Mills

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE ASSESSED VALUE OF RESIDENTIAL PROPERTY IS BASED UPON THE ACQUISITION COST OF THE PROPERTY; PROVIDING FOR ANNUAL ADJUSTMENTS FOR INFLATION, DAMAGE, DESTRUCTION, OR OTHER LOSS OF VALUE TO THE PROPERTY; PROVIDING THAT THE BASE ACQUISITION COST BE MODIFIED IF, AFTER DECEMBER 31, 1992, THE PROPERTY IS PURCHASED OR NEWLY CONSTRUCTED OR ITS OWNERSHIP CHANGES; AMENDING SECTIONS 15-8-111 AND 15-8-112, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of revenue authority to adopt administrative rules to administer the provisions of this bill. It is the intent of the legislature that those rules address the forms, procedures, and other matters necessary to carry out the administration of this bill.

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

NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 13], the following definitions apply:

(1) "Arm's-length transaction" or "arm's-length sale" means a sale between a willing buyer and a willing seller who are not related either personally or through other business dealings, neither being under any compulsion to buy or sell and both having a reasonable knowledge of relevant facts.

(2) "Change in ownership" means a transfer of a present interest in real property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. The term does not include a purchase.

(3) "Department" means the department of revenue created in 2-15-1301.

(4) "Newly constructed" and "new construction" mean:

(a) an addition to real property, whether land or improvements, including fixtures;

(b) an alteration of land or any improvement, including fixtures; or

(c) any rehabilitation, renovation, or modernization of an improvement or fixture.

(5) "Property" or "real property" means all improvements, including trailers or mobile homes used as a residence, and appurtenant land not exceeding 5 acres, occupied as a residence at least 10 months a year.

(6) "Purchase" or "purchased" means an arm's-length

sale or a transfer for consideration.

NEW SECTION. **Section 2. Property -- determination of assessed value.** (1) (a) The assessed value of property is the base acquisition cost of the property, adjusted for inflation or reduction in value. The base acquisition cost is:

(i) the 1992 taxable value of the property; or

(ii) the value of the property if, since December 31, 1992, the property is purchased or newly constructed or its ownership has changed.

(b) Each year, the base acquisition cost of the property must be adjusted. The base acquisition cost for assessment purposes is the lesser of the prior year's base acquisition cost:

(i) increased or decreased based upon an inflationary rate for Montana that reflects Montana changes in consumer prices; or

(ii) decreased to reflect damage, destruction, or other factors causing a decline in the value of the property.

(2) (a) The inflation rate used for annual adjustments of the base acquisition cost is the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, adjusted to reflect prices in Montana.

(b) The department shall by rule adopt criteria for

adjusting the national index to reflect prices in Montana and shall adopt an inflation rate by rule.

NEW SECTION. **Section 3. Change in ownership -- inclusions -- presumption.** (1) A change in ownership includes but is not limited to the following:

(a) the creation, transfer, or termination of any joint tenancy or tenancy in common interest, except as provided in [sections 4, 5, and 7];

(b) a vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in [sections 4(1)(d) and 5];

(c) when the trust is irrevocable, an interest in the property that vests in persons other than the trustor or, pursuant to [section 5], the trustor's spouse;

(d) the transfer of any interest in the property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person;

(e) the creation, renewal, sublease, or assignment of a taxable possessory interest in tax-exempt real property for any term; and

(f) (i) the creation of a leasehold interest in real property for a term of 35 years or more, including renewal options; the termination of a leasehold interest in real property that had an original term of 35 years or more, including renewal options; and any transfer of a leasehold interest having a remaining term of 35 years or more, including renewal options;

(ii) a transfer of a lessor's interest in taxable real property subject to a lease with a remaining term, including renewal options, of less than 35 years.

(2) For purposes of subsections (1)(f)(i) and (1)(f)(ii), only the portion of property subject to the lease or transfer is considered to have undergone a change of ownership.

(3) It is conclusively presumed that residences, other than mobile homes located on rented or leased land and subject to taxation as personal property pursuant to 15-24-202, that are on leased land have a renewal option of at least 35 years on the lease of the land, whether or not a renewal option exists in a contract or agreement.

NEW SECTION. **Section 4. Change in ownership -- exclusions.** (1) A change in ownership does not include:

(a) a transfer between co-owners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in the property, such as a tenancy in common;

(b) a transfer between an individual or individuals and a legal entity or between legal entities, such as a

cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each piece of real property transferred remain the same after the transfer;

(c) any transfer for the purpose of perfecting title to the property;

(d) the creation, assignment, termination, or reconveyance of a security interest or the substitution of a trustee under a security instrument;

(e) a transfer by the trustor, by the trustor's spouse, or by both, into a trust if:

(i) the transferor is the present beneficiary of the trust;

(ii) the trust is revocable;

(iii) any transfer by a trustee of a trust described in subsection (1)(e)(i) or (1)(e)(ii) is back to the trustor; or

(iv) any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years' duration;

(f) any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life constitutes a change in ownership except as provided in [section 5(4)].

(g) any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of 35 years or more, other than mobile homes located on rented or leased land subject to taxation as personal property pursuant to 15-24-202. It is conclusively presumed that residences, other than mobile homes located on rented or leased land and subject to taxation as personal property pursuant to 15-24-202, that are on leased land have a renewal option of at least 35 years on the lease of the land, whether or not a renewal option exists in a contract or agreement.

(h) any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution;

(i) any transfer of stock or membership certificate in a housing cooperative:

(i) (A) that was financed under one mortgage, if the mortgage was insured under section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended (12 U.S.C.A. 1715e, 1715l, and 1715z-1);

(B) that was financed or assisted pursuant to section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C.A.

1484, 1485, or 1486) or section 202 of the Housing Act of 1959 (12 U.S.C.A. 1701q); or

(C) that was financed by the Montana board of housing pursuant to Title 90, chapter 6;

(ii) whose regulatory and occupancy agreements were approved by the governmental lender or insurer; and

(iii) when the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or not eligible for interest reduction by reason of the income level of that person or family constitutes a change of ownership.

(j) any transfer, which would otherwise be a change in ownership, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties as long as the original relationship between the grantor and grantee is not changed;

(k) any intrafamily transfer of an eligible dwelling unit, as described in subsection (2), from a parent or legal guardian to:

(i) a minor child or children or between or among minor siblings as a result of a court order or judicial decree because of the death of the parent or guardian; or

(ii) a child or ward if the child or ward has been disabled for at least 5 years preceding the transfer and if the child or ward has an adjusted gross income that, when combined with the adjusted gross income of a spouse, parents, and children, does not exceed $20,000 in the year in which the transfer occurs. The child or ward may be an adult or minor.

(2) To be eligible for transfer under subsection (1)(k), the dwelling unit must have been the principal place of residence of the child or ward prior to the transfer and remain the principal place of residence of the child or ward after the transfer.

NEW SECTION. **Section 5. Interspousal transfer -- not change in ownership.** A change of ownership does not include an interspousal transfer. As used in this section, an interspousal transfer includes but is not limited to:

(1) transfers:

(a) to a trustee for the beneficial use of a spouse;

(b) to the surviving spouse of a deceased transferor; or

(c) by a trustee of the trust to the spouse of the trustor;

(2) transfers to a surviving spouse that take effect upon the death of a spouse;

(3) transfers to a spouse or former spouse in

connection with a property settlement agreement, decree of dissolution of a marriage, or legal separation;

(4) the creation, transfer, or termination, solely between spouses, of any co-owner's interest; or

(5) the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement, decree of dissolution of a marriage, or legal separation.

NEW SECTION. **Section 6. Corporate and other legal entity ownership.** (1) Except as provided in subsections (3) and (4), the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, does not constitute a transfer of real property of the legal entity.

(2) (a) A corporate reorganization is not a change of ownership if it is a reorganization:

(i) in which all of the corporations involved are members of an affiliated group;

(ii) that qualifies as a reorganization under section 368 of the Internal Revenue Code; and

(iii) that is a nontaxable event under Montana law.

(b) A transfer of real property among members of an affiliated group is not a change of ownership.

(c) For the purposes of this subsection (2), an "affiliated group" is two or more corporations connected through stock ownership with a common parent organization if:

(i) all of the voting stock, exclusive of any share owned by directors, of each of the corporations except the parent corporation is owned by one or more of the other corporations; and

(ii) the common parent corporation directly owns all of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(3) When a corporation, partnership, or other legal entity or any other person obtains control in a corporation or obtains a majority ownership interest in a partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interest in the other legal entities, the purchase or transfer of the stock or other interest is a change of ownership of the property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

(4) If property is transferred to a legal entity in a transaction excluded from change in ownership under [section 4(1)(b)], then the persons holding ownership interests in the legal entity immediately after the transfer are considered the original co-owners. Whenever shares or other ownership interest representing cumulatively more than 50%

of the total interest in the entity is transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property owned by the legal entity has occurred and the property that was previously excluded from change in ownership under [section 4(1)(b)] must be appraised.

(5) The department shall include a question on returns for partnerships, banks, and corporations (except tax-exempt organizations) to determine whether the corporation owns real property in Montana and, if so, whether cumulatively more than 50% of the voting stock or more than 50% of the total interest in both partnership capital and partnership profits has been transferred by the corporation or partnership or has been acquired by another legal entity or person during the year.

NEW SECTION. **Section 7.** Joint tenancy property -- change in ownership. (1) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in [sections 4 and 5] and this section. Upon a change in ownership of a joint tenancy interest, only the interest or portion that is transferred from one owner to another owner must be appraised.

(2) (a) There is no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after the creation or transfer,

are among the joint tenants. Upon the creation of a joint tenancy, the transferor or transferors are considered the original transferor or transferors for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors are also considered original transferors within the meaning of this section.

(b) Upon the termination of an interest in any joint tenancy described in subsection (2)(a), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy must be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there may not be an appraisal. Upon the termination of the interest of the last-surviving original transferor, there must be an appraisal of the interest then transferred and all other interest in the properties that were held by original transferors and that were previously excluded from appraisal pursuant to this section.

(c) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subsection (2)(a), there may not be an appraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants.

(3) For the purposes of this section, for joint

tenancies created before January 1, 1995, it is rebuttably presumed that each joint tenant holding an interest in the property as of January 1, 1995, is considered an original transferor. There is no presumption for joint tenancies created on or after January 1, 1995.

NEW SECTION. **Section 8. Partial interests -- change of ownership -- application of tax increase.** (1) Except for a joint tenancy interest described in [section 4(1)(b)], when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred must be appraised. A purchase or change in ownership of an interest with a market value of less than 5% of the value of the total property may not be appraised if the market value of the interest transferred is less than $10,000, but transfers during any 1 assessment year must be cumulated for the purpose of determining the percentage of interest and value transferred.

(2) If a unit or lot within a cooperative housing corporation, condominium, planned unit development, or other residential or land subdivision complex with common areas or facilities changes ownership, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of the unit or lot must be appraised as provided in 15-8-111. The increase in property taxes resulting from the appraisal must be applied by the owner of

the property only to the tenant-shareholder, lessee, or occupant of the individual unit or lot and may not be prorated among all the other units or lots of the property.

NEW SECTION. **Section 9. Eminent domain and similar proceedings.** The acquisition of property as a replacement for comparable property is not a change in ownership if the person acquiring the property has been displaced from property by eminent domain proceedings, acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation.

NEW SECTION. **Section 10. Disasters -- transfer of acquisition costs.** The acquisition cost of property that is substantially damaged or destroyed by a disaster, as declared by the governor, may be transferred to comparable property within the same county.

NEW SECTION. **Section 11. New construction -- exclusions.** (1) If real property has been damaged or destroyed by misfortune or calamity, timely reconstruction of the property or a portion of the property is not new construction if the property after reconstruction is substantially equivalent to the property prior to the damage or destruction. Reconstruction that is not substantially equivalent to the damaged or destroyed property is considered to be new construction, and only the portion that exceeds substantially equivalent reconstruction must be

reappraised.

(2) The construction or addition of any active solar energy system is not new construction. Active solar energy systems that are excluded from new construction are systems that use solar devices thermally isolated from living space or other areas where the energy is used and that provide for collection, storage, or distribution of solar energy. To qualify for the exclusion, the solar energy system must be used for:

(a) domestic, recreational, therapeutic, or service hot water heating;

(b) space conditioning;

(c) production of electricity;

(d) process heat; or

(e) solar mechanical energy.

(3) The construction or installation of a fire sprinkler system or other fire extinguishing system, a fire detection system, or a fire-related egress improvement is not new construction.

(4) The construction, installation, or modification of any component of a residential improvement for the purpose of making the dwelling more accessible to severely disabled persons is not new construction.

NEW SECTION. **Section 12. Appraisal by department -- change in ownership and new construction -- disputed**

purchase price. (1) Whenever a change in ownership or new construction not excluded under [section 11] occurs, the department shall appraise the property at the full market value of the property effective January 1 of the next year.

(2) Upon the purchase of property, the department may appraise the property and establish an acquisition cost for the property if:

(a) the department believes that the purchase price of a sale of property was not the result of an arm's-length transaction between the buyer and the seller;

(b) the purchase price is not reported on the realty transfer certificate; or

(c) the purchase price as reported appears to be erroneous or incomplete or the department believes that the purchase price in any other manner does not represent the market value of the property.

(3) If a purchase price is not reported or if the assessed value upon appraisal by the department is more than 20% greater than the reported purchase price, the department shall charge the taxpayer for the cost of the appraisal. The taxpayer may contest the department's valuation of the property as provided in 15-7-102.

NEW SECTION. **Section 13.** **Rulemaking authority.** The department may adopt rules to implement [sections 1 through 13].

Section 14. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment -- market value standard -- exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department of revenue uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department ~~of revenue~~ shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department ~~of revenue~~ or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the

value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through ~~15-6-133~~ 15-6-134 and 15-6-143 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, or 15-23-517.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) ~~Beginning--January-1,-1990,-and-ending-December-31,-1993,-properties-in-15-6-143,-under-class-ten,-are--assessed at--100%--of--the--combined--appraised-value-of-the-standing timber-and-grazing-productivity-of-the-land-when--valued--as timberland.~~ The assessed value of residential property in class four, as described in 15-6-134, is the acquisition cost of the property as determined in [sections 1 through 13].

(e) Beginning January 1, 1994, properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. ~~(Subsection--(6)(d)-terminates-January-1,-1994--sec.-19,-Ch. 783,-L.-1991.)~~"

Section 15. Section 15-8-112, MCA, is amended to read:

"15-8-112. **Assessments to be made on classification and ~~appraisal~~ assessment.** (1) ~~The~~ Subject to the provisions of 15-8-111, the assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal assessment as made or caused to be made by the department of revenue.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property ~~which~~ that it is required to assess centrally under the laws of this state. The department shall transmit ~~such~~ the determination and assignment to its agents in the various counties with the assessments ~~so~~ made, and its determination is final except as to the right of review in the state tax appeal board or the proper court."

NEW SECTION. **Section 16.** **Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

NEW SECTION. **Section 17.** **Effective date -- applicability.** [This act] is effective January 1, 1994, and applies to tax years beginning after December 31, 1993.

-End-