HOUSE BILL 77

Introduced by Ryan

12/08	Fiscal Note Requested
12/09	Introduced
12/09	Referred to Taxation
12/09	First Reading
12/11	Fiscal Note Received
12/13	Fiscal Note Printed
12/13	Hearing
	Died in Committee

House BILL NO. 77

INTRODUCED BY Wm Ryan

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROPERTY TAX RELIEF BY 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; PROVIDING PENALTIES FOR PROVIDING FALSE INFORMATION ON A CERTIFICATE; ESTABLISHING A HOMEOWNER PROTECTION ACCOUNT FOR FUNDING THE INCOME TAX CREDIT FOR PROPERTY TAXES PAID; DEPOSITING THE PROCEEDS OF THE REALTY TRANSFER TAX IN THE HOMEOWNER PROTECTION ACCOUNT; ALLOWING A CREDIT AGAINST INDIVIDUAL INCOME TAX LIABILITY FOR THE INCREASE IN PROPERTY TAXES PAID DUE TO REAPPRAISAL AND INCREASED MILL LEVIES, EXCEPT FOR NONVOTED SCHOOL LEVIES; REQUIRING TAXPAYERS TO MAKE APPLICATION WITH THE COUNTY ASSESSOR; DIRECTING THE COUNTY ASSESSOR TO DETERMINE THE AMOUNT OF PROPERTY TAX PAID THAT MAY BE ELIGIBLE FOR THE CREDIT; AMENDING SECTIONS 15-7-301, 15-7-302, 15-7-303, 15-7-305, 15-7-306, 15-7-307, 15-7-308, AND 15-7-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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 homeowner protection account in order to provide property tax relief in the form of income tax credits as provided in [section 13]; 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 transfer that is not an arm's-length transfer or other than 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 transfer that is not an arm's-length transfer or that is a transfer without stated consideration, the 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 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."

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 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~~ April 1, 1994;

(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 a previously recorded instrument;

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

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

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

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

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

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

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

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

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

Section 7. Section 15-7-308, MCA, is amended to read:

"**15-7-308. Disclosure of information restricted.** The certificate required by this part, ~~and~~ the information ~~therein--shall~~ contained in the certificate, and the tax due under this part are not ~~be-a~~ public ~~record~~ records and ~~shall~~ must be held confidential by the county clerk and recorder, county assessor, county treasurer, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The ~~foregoing~~ provisions ~~shall~~ of this section do not apply to compilations from ~~such~~ the certificates or to summaries, analyses, and evaluations based upon ~~such~~ the compilations."

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

"**15-7-310. Penalty.** (1) A person convicted of violating any provision of this part shall be fined an amount not to exceed $500 or be imprisoned in the county jail for ~~any~~ a term not to exceed 6 months, or both.

(2) A person falsifying the value of transferred real estate on the certificate required under 15-7-305 shall pay a civil penalty of $1,000 for each offense. The department of revenue shall enforce the civil penalty under this subsection."

NEW SECTION. **Section 9.** **Imposition of tax.** A tax at the rate of 1% of the value declared in the certificate required under 15-7-305 is imposed upon the transfer of title to real property. The tax is on the person seeking to record the transfer of title to the property. The person has the burden of claiming and demonstrating the right to any exemption from 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 that is subject to the tax imposed by [section 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 same manner that 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.** Pursuant to 15-1-504, the county treasurer shall forward to the state treasurer the amount of the tax collected under [section 10] in the preceding month. The state treasurer shall deposit the amounts received under this section in the homeowner protection account established in [section 12].

NEW SECTION. **Section 12.** **Homeowner protection account.** (1) There is a homeowner protection account in the state special revenue fund provided for in 17-2-102.

(2) All money received under [section 11] must be deposited in the account.

(3) Money in the account must be used to provide tax refunds for the property tax credit allowed in [section 13].

(4) If there is an insufficient balance in the account to allow for the payment of all refunds, then refunds must be made as provided in 15-1-501(7).

<u>NEW SECTION.</u> **Section 13. Property tax credit.** (1) An income tax credit against the tax imposed by 15-30-103 is allowed for the dollar amount of general property tax increase on an individual's primary residence, as assessed in 1989 or in the case of a primary residence acquired after 1989 and before 1993, as assessed in the year following the year of acquisition, that results from reappraisal or from the imposition of additional nonvoted mill levies, except nonvoted school levies.

(2) In order to qualify for the credit, the property taxpayer shall apply to the county assessor in the county in which the taxpayer lives. Upon application by the taxpayer, the county assessor shall:

(a) compare the actual dollar amount of general property taxes due on the property in the current tax year to the general property taxes assessed on the property in 1989 or, if the property was acquired after 1989 but before

1993, to the general property taxes assessed on the property in the year following the year of acquisition; and

(b) if the amount of general property taxes due in the current tax year is greater than the amount due in the 1989 tax year or if the property was acquired after 1989 but before 1993 and the amount is greater than the amount due in the tax year following the year in which the transfer occurred, exclude the amount of general property tax due in the current year that is attributable to voted mill levies imposed after 1989 for the first time in the taxing jurisdiction in which the primary residence is located.

(3) If the amount determined under subsection (2)(b) exceeds the amount of general property tax assessed in 1989 or, for a taxpayer who acquired the property after 1989 and before 1993, if the amount determined under subsection (2)(b) exceeds the amount of general property tax assessed in the year following the year in which the property was acquired, the taxpayer is eligible for a credit in the amount of the excess as adjusted in subsection (4).

(4) The amount of the credit is the amount determined in subsection (2)(b) multiplied by a percentage figure based on income and determined from the following table:

Household Income	Percentage Multiplier
$0 - $ 5,555	100%
5,556 - 11,111	90%

11,112 -	22,223	80%
22,224 -	33,335	70%
33,336 -	44,447	60%
44,448 -	55,559	50%
55,560 -	66,671	40%
66,672 -	77,783	30%
77,784 -	88,895	20%
88,896 -	100,000	10%

(5) In order to be eligible for the credit, the property taxpayer must be the same taxpayer against whom property taxes for the property were assessed in 1989, 1990, 1991, or 1992. A property taxpayer is eligible for a credit upon payment of the property taxes assessed against the primary residence. Payment of delinquent taxes does not make a property taxpayer eligible for a credit. If a taxpayer has paid taxes under protest, a credit may not be claimed until there has been a final determination.

(6) If the amount of the credit exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even though the taxpayer has no income taxable under this chapter.

(7) As used in this section, the following definitions apply:

(a) "Household income" means federal adjusted gross

income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) payments and interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) "Primary residence" means class four property, as provided in 15-6-134, that the taxpayer occupies as the taxpayer's dwelling for at least 6 months a year. A taxpayer may claim only one primary residence.

<u>NEW SECTION.</u> **Section 14. Codification instruction.** (1) [Sections 9 through 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 9 through 11].

(2) [Sections 12 and 13] are 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 [sections 12 and 13].

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 16. Applicability.** (1) [Sections 12 and 13] apply to tax years beginning after December 31, 1993.

(2) [Sections 1 through 11] apply to realty transfers occurring after March 31, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0077, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing property tax relief by 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; providing penalties for providing false information on a certificate; establishing a homeowner protection account for funding the income tax credit for property taxes paid; depositing the proceeds of the realty transfer tax in the homeowner protection account; allowing a credit against individual income tax liability for the increase in property taxes paid due to reappraisal and increased mill levies, except for nonvoted school levies; requiring taxpayers to make application with the county assessor; directing the county assessor to determine the amount of property tax paid that may be eligible for the credit; and providing an immediate effective date and applicability dates.

ASSUMPTIONS:
1. In a calendar year, the value of all non-agricultural real property transferred in the state is estimated to be $1.93 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. There are 206,000 owner occupied housing units in Montana (US Census). Of this number, 82.8% (170,568) are eligible for the credit (i.e., 82.8% are the same taxpayer against whom property taxes for the property were assessed in 1989, 1990, 1991, or 1992) (see technical note 1). **Any property sold after December 31, 1991, is not eligible for the credit provided in this bill.**
3. Of the 170,568 eligible for the credit, 57% (97,224) received an increases in assessed value due to reappraisal. The average increase was $8,185. This is a total increase in assessed value of $795,770,255, of which 45% ($358,096,615) is within a city/town.
4. The credit would apply to mills levied for state (university 6 mill levy), county, and city/town nonvoted mill levies. Mills levied for the school foundation program (95 mills) are considered a nonvoted school levy (see technical note 2).
5. For the purposes of this fiscal note, it is assumed that the I-105 property tax freeze has resulted in nonvoted mills levied for state (university 6 mill levy), county, and city/town purposes remaining constant for 1989 thru 1994.
6. Average mill levies for residential property are 6.00 mills for universities, 95.00 mills for the school foundation program, 75.88 mills for counties, and 96.08 for cities and towns.
7. Application of the household income based percentage multipliers contained in the proposal results in 60% of the potential total credit being paid to taxpayers.

FISCAL IMPACT:

(see next page)

Dave Lewis 12-8
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

12-13-93
BILL RYAN, PRIMARY SPONSOR DATE
Fiscal Note for HB0077, as introduced

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(continued)

FISCAL IMPACT:

Revenues:

Impact to the Homeowner Protection Account:

	FY94	FY95
1% Realty Transfer Tax	$ 0	$ 19,300,000
Paid in Income Tax Credits	0	(2,305,893)
Balance	$ 0	$ 17,994,107

Expenditures:

There are expenditures associated with this bill. Divisions incurring expenditures are property assessment, income tax, and operations. For the sake of expediency, these costs are not calculated.

TECHNICAL NOTES:

1. In section 13, parts (1), (2), and (3), the proposal implies that individuals who acquired their primary residence in calendar year 1992 may be eligible for the credit. However, these individuals would not qualify for the credit under section 13(4) because they would not have been the same taxpayer against whom property taxes for the property were assessed in 1992.

2. Mills levied for the school foundation program in 1989 totaled 45 mills. Mills levied for the school foundation program for 1990 and beyond totaled 95 mills. If school foundation program mills are included in calculating the credit, those taxpayers who acquired their home prior to 1990 most likely would receive larger credits than those taxpayers who acquired their home in 1990 or 1991.