SENATE BILL 26

Introduced by Van Valkenburg, et al.

12/02	Introduced
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Senate BILL NO. 26

INTRODUCED BY Van Valkenburg, Swanson, Kennedy, Franklin, Doherty, Gergeson

A BILL FOR AN ACT ENTITLED: "AN ACT ADDRESSING LONG-RANGE STRUCTURAL CONCERNS OF THE GOVERNOR'S TAX ADVISORY COUNCIL FOR PROPERTY OWNERSHIP; IMPLEMENTING THE AMENDMENT TO THE MONTANA CONSTITUTION ALLOWING A LIMITATION ON INCREASES IN ASSESSED VALUE OF CLASS FOUR PROPERTY TO 4 PERCENT A YEAR; PROVIDING FOR THE PHASEIN OF INCREASES IN VALUE BECAUSE OF PERIODIC REAPPRAISAL; ALLOWING A DECREASE IN MARKET VALUE TO BE EFFECTIVE WITHOUT A PHASEIN; PROVIDING THAT THE SALE PRICE BECOMES THE ASSESSED VALUE UPON A CHANGE IN OWNERSHIP; ENACTING A TAX ON THE DIFFERENCE BETWEEN THE ASSESSED VALUE USED FOR PROPERTY TAXATION AND THE SELLING PRICE OF THE PROPERTY OVER $5,000; AMENDING SECTIONS 15-7-305 AND 15-8-111, MCA; AND PROVIDING A CONTINGENT EFFECTIVE 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. The legislature intends that the department prepare the necessary forms and establish procedures for taxpayers to receive the benefits of the value limitation and that the administration of the tax on limited valuation at the time of sale be made as easy

administratively as possible for both taxpayers and sellers not subject to the tax.

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

NEW SECTION. **Section 1.** **Short Title.** [This act] may be cited as the "Montana Homeowners Equity Act of 1997".

Section 2. 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 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~~ in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in ~~Title~~ Titles 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 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~~ Properties in 15-6-134, under class four, are assessed based upon an adjusted value as provided in [section 3].

(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.)~~"

NEW SECTION. **Section 3. Phasein of assessed value of land -- limitation on increase in value.** (1) An increase in the appraised value of class four property resulting from the reappraisal cycle must be phased in. Each year following a reappraisal cycle, the value of the property must be increased annually by 33% of the difference between the phased-in value from the previous appraised value and the new appraised value. The increase in value may not exceed 4% of the previous year's value.

(2) If the ownership of the property changes, the assessed value of the property is the sale price of the property. If the change in ownership was not a sale, the assessed value of the property is the appraised market value of the property.

(3) If the appraised value of property decreases because of a reappraisal cycle, the decreased value is the assessed value and is not phased in.

NEW SECTION. **Section 4. Exempt changes in ownership.** The following transactions are not changes in ownership

subject to appraisal under [section 3] or the tax on limited assessed value of property provided for in [section 5]:

(1) title corrections; and

(2) intrafamily transfers, including transfers to a spouse or former spouse because of separation or divorce or to a surviving spouse upon the death of a spouse.

NEW SECTION. **Section 5. Tax on limited assessed value.** (1) There is a 5% tax, payable by the seller of the property, on the amount over $5,000 that is the difference between the sale price of subject class four property and the assessed value used to compute the taxable value of the property for the previous tax year.

(2) If the property is transferred other than by sale, the appraised market value established at the last periodic reappraisal is considered to be the sale price. The appraised market value established at the last periodic reappraisal is the appraised amount without any adjustments for phasein and is not limited by the 4% increase cap. If the department of revenue or a party to the transaction believes that the appraised market value established at the last periodic reappraisal is an inaccurate reflection of market value, the department or a party may have the property appraised according to rules established by the department.

(3) Transactions specified in [section 4] are not

subject to the tax imposed by this section.

(4) Class four property is subject to the tax imposed by this section if the increase in the value of the property was limited, in any of the previous 3 tax years, by the 4% limitation established in [section 3].

NEW SECTION. **Section 6. Appraisal by department -- change in ownership -- disputed purchase price.** (1) Whenever a change in ownership occurs that is not a sale, the department of revenue shall appraise the property at the full market value. The appraised value of the property is effective January 1 of the next year.

(2) Upon the purchase of property, the department may appraise the property and establish an acquisition value 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 if 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 7. Disposition of proceeds.** The county treasurer shall distribute all taxes collected under [section 5], less an amount necessary for the payment of refunds, in the relative proportions required by the levies for state, county, school district, municipal, and other purposes in the same manner as personal property taxes are distributed.

NEW SECTION. **Section 8. Rulemaking authority.** The department of revenue may adopt rules to implement [sections 3 through 10].

NEW SECTION. **Section 9. Failure to pay -- penalty -- review -- interest.** (1) A seller of subject property who fails to make payment as required by [section 5] must be assessed a penalty of 10% of the amount that was not paid. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) (a) If a seller understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the seller. The provisions of 15-1-211 apply to any assessment by the department. The seller may seek review of the assessment pursuant to

15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the seller. The tax is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original date of the sale of the subject property.

(3) The amount required to be paid under [section 5] accrues interest at the rate of 1% a month or fraction of a month from delinquency until paid.

NEW SECTION. **Section 10.** **Credit for overpayment -- interest on overpayment.** (1) If the department of revenue determines that the amount of tax, penalty, or interest paid for any sale is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance must be refunded to the taxpayer; to the taxpayer's successor through reorganization, merger, or consolidation; or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the date of the sale or from the date of overpayment, whichever is later, to the date on

which the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date of the sale or from the date the overpayment was made, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by [sections 4 through 10] is considered an overpayment with respect to which interest is allowable.

Section 11. 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~~ unless

it is accompanied by a receipt for the payment of the tax imposed by [section 5] or a claim, endorsed by the county treasurer, for exemption from the tax and the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as between the parties to it ~~shall~~ is not ~~be~~ affected by the failure to pay the tax imposed by [section 5] or to comply with the provisions in this part.

(3) The form of 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 each executed certificate to the department."

NEW SECTION. **Section 12. Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 15, chapter 8, and the provisions of Title 15, chapter 8, apply to [section 3].

(2) [Sections 4 through 10] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 4 through 10].

NEW SECTION. **Section 13. Contingent effective date.** If ___ Bill ___ [LC 117], amending the Montana constitution, is

LC 0174/01

approved by the electorate, then [this act] is effective January 1, 1997.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0026, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act addressing long-range structural concerns of the governor's tax advisory council for property ownership; implementing the amendment to the Montana Constitution allowing a limitation on increases in assessed value of class four property to 4 percent a year; providing for the phase-in of increase in value because of periodic reappraisal; allowing a decrease in market value to be effective without a phase-in; providing that the sale price becomes the assessed value upon a change in ownership; enacting a tax on the difference between the assessed value used for property taxation and selling price of the property over $5,000; and providing a contingent effective date.

FISCAL IMPACT:

Expenditures:
The proposed legislation will not impact department expenditures during the current biennium. However, expenditures will be incurred during the next biennium for computer upgrading and software programming within the Property Assessment Division to meet the requirements of administering this bill.

Revenues:
The proposed legislation will have no impact to state or local government property tax revenues during the current biennium. It is impossible to determine the impact of the proposed legislation until the next statewide property reevaluation is conducted.

TECHNICAL NOTE:
In section 3 of the proposal it is unclear what the "phased-in value from the previous appraised value" is. This becomes important in the calculation of the appraised value for the second year following the reappraisal cycle.

Dave Lewis 12-4

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

Fred Van Valkenburg

FRED R. VAN VALKENBURG, PRIMARY SPONSOR DATE
Fiscal Note for SB0026, as introduced

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