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INTRODUCED BY Groff ^{SENATE} BILL NO. 272

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING, UNDER CERTAIN CONDITIONS, THE REQUIREMENT THAT THE SURVIVING SPOUSE OF A JOINT TENANCY THAT DOES NOT REQUIRE A PERSONAL REPRESENTATIVE FILE AN APPLICATION WITH THE DEPARTMENT OF REVENUE FOR INHERITANCE TAX PURPOSES; REVISING THE INFORMATION REQUIREMENTS THAT MUST BE FILED BY THE SURVIVING SPOUSE FOR THE RELEASE OF THE LIEN FOR INHERITANCE TAXES; AMENDING SECTIONS 7-4-2613, 72-16-502, AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 72-16-502, MCA, is amended to read:

"72-16-502. Determination and payment of tax when no personal representative -- procedure -- exception. (1) For the purposes of this section, a decedent is one who dies leaving no property ~~which~~ that requires the appointment of a personal representative and who:

(a) was the owner of a life estate ~~which~~ that terminated at ~~his~~ death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of ~~his~~ death.

(2) ~~Upon the death of a decedent~~ Except as provided in subsection (6), a remainderman, surviving joint tenant, or other interested party shall, upon the death of a decedent, file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application, in a form prescribed by the department, containing ~~such~~ information ~~as~~ that the department considers necessary; and

(c) evidence of the instruments ~~which~~ that created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

1 (3) Upon receipt of the application, the department shall:

2 (a) stamp the filing date upon the application;

3 (b) issue a certificate showing the inheritance tax due, if any;

4 (c) affix the certificate to a certified copy of the application and return the ~~same~~ certificate and
5 copy to the applicant or ~~his~~ the applicant's attorney; and

6 (d) affix a copy of the certificate to the original application and keep it on file with the department.

7 (4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal
8 to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

9 (5) If disputes arise as to tax computation, they ~~shall~~ must be resolved as provided under the laws
10 applicable to the determination of inheritance taxes in estates.

11 (6) A surviving joint tenant who is the surviving spouse of a decedent whose aggregate value of
12 the interest in the joint property is less than the federal estate tax filing requirement is not required to file
13 under subsection (2)."

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15 **Section 2.** Section 72-16-503, MCA, is amended to read:

16 **"72-16-503. Additional filings required when real property involved and no representative -- release**
17 **of lien.** (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the
18 clerk and recorder of each county in which the real property or any part ~~thereof~~ of the property is located
19 a document containing those matters required by 7-4-2613(3). A surviving joint tenant who is the surviving
20 spouse is not subject to the recording requirements under 7-4-2613(3).

21 (2) The surviving joint tenant who is the surviving spouse with an interest in real property under
22 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an
23 affidavit stating that the holder of the nonprobate interest has died and that the holder's interest in the
24 property is terminated. A copy of the certificate of death must be attached to the affidavit.

25 ~~(2)(3)~~ The recording of the documents under subsection (1) or (2) constitutes release of any lien
26 for inheritance taxes."

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28 **Section 3.** Section 7-4-2613, MCA, is amended to read:

29 **"7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the
30 appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or

1 by the use of prepared blank forms:

2 (1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or
3 decrees partitioning or affecting the title or possession of real property any part of which is situated in the
4 county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers
5 of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the
6 instruments that have been acknowledged or proved;

7 (b) an instrument or deed evidencing either a division of real property or a merger of real property
8 only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and
9 special assessments that have been assessed and levied have been paid;

10 (2) notices of buyer's interest in real property, notwithstanding any other requirement of law or
11 rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the
12 notice of buyer's interest; ~~however,~~ However, if the instrument of conveyance underlying a notice of
13 buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that
14 the underlying instrument is unrecordable and may be void;

15 (3) except as provided in 72-16-503, a document on a form provided by the department of revenue
16 certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's
17 interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest,
18 or any other interest not requiring probate. The document may be on the form used by the department of
19 revenue for responding to the application for determination of inheritance or estate tax. It must contain:

20 (a) a statement that the holder of the nonprobate interest has died and that the holder's interest
21 in the property is terminated;

22 (b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due,
23 has been paid or that inheritance or estate tax was not due;

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26 (5) wills devising real estate admitted to probate;

27 (6) official bonds;

28 (7) transcripts of judgments that by law are made liens upon real estate;

29 (8) instruments describing or relating to the individual property of married persons;

30 (9) all orders and decrees made by the district court in probate matters affecting real estate and

- 1 that are required to be recorded;
- 2 (10) notice of preemption claims;
- 3 (11) notice and declaration of water rights;
- 4 (12) assignments for the benefit of creditors;
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- 9 (17) other writings that are required or permitted by law to be recorded."

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11 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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13 NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
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STATE OF MONTANA - FISCAL NOTE

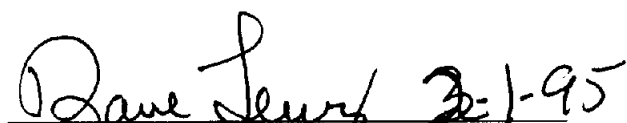
Fiscal Note for SB0272, as introduced

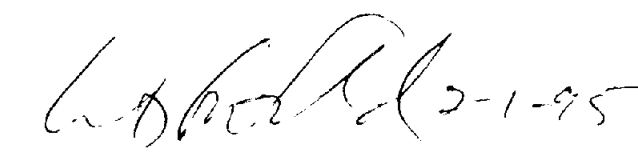
DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating, under certain conditions, the requirement that the surviving spouse of a joint tenancy that does not require a personal representative file an application with the department of revenue for inheritance tax purposes; revising the information requirements that must be filed by the surviving spouse for the release of the lien for inheritance taxes; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:

This proposal has no impact on expenditures or revenues.


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


LORENTS GROSFIELD, PRIMARY SPONSOR DATE
Fiscal Note for SB0272, as introduced

SB 272

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2 INTRODUCED BY GROSFIELD

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16 **exception.** (1) For the purposes of this section, a decedent is one who dies leaving no property ~~which that~~
17 requires the appointment of a personal representative and who:

18 (a) was the owner of a life estate ~~which that~~ terminated at ~~his~~ death;

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20 and not as a tenant in common; or

21 (c) was the owner of any other interest in property requiring the determination of inheritance tax
22 because of ~~his~~ death.

23 (2) ~~Upon the death of a decedent~~ Except as provided in subsection (6), a remainderman, surviving
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26 (a) a copy of the death certificate;

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29 (c) evidence of the instruments ~~which that~~ created the life estate, joint tenancy, or other interest
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1 (3) Upon receipt of the application, the department shall:

2 (a) stamp the filing date upon the application;

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4 (c) affix the certificate to a certified copy of the application and return the ~~same certificate and~~
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9 (5) If disputes arise as to tax computation, they ~~shall~~ must be resolved as provided under the laws
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11 (6) A surviving joint tenant who is the surviving spouse of a decedent whose aggregate value of
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25 the affidavit. THE ACKNOWLEDGED STATEMENT MUST INCLUDE A LEGAL DESCRIPTION OF THE REAL
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15 NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
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18 certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's
19 interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest,
20 or any other interest not requiring probate. The document may be on the form used by the department of
21 revenue for responding to the application for determination of inheritance or estate tax. It must contain:

22 (a) a statement that the holder of the nonprobate interest has died and that the holder's interest
23 in the property is terminated;

24 (b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due,
25 has been paid or that inheritance or estate tax was not due;

26 (c) a description of the property;

27 (4) certificates of births and deaths;

28 (5) wills devising real estate admitted to probate;

29 (6) official bonds;

30 (7) transcripts of judgments that by law are made liens upon real estate;

- 1 (8) instruments describing or relating to the individual property of married persons;
2 (9) all orders and decrees made by the district court in probate matters affecting real estate and
3 that are required to be recorded;
4 (10) notice of preemption claims;
5 (11) notice and declaration of water rights;
6 (12) assignments for the benefit of creditors;
7 (13) affidavits of annual work done on mining claims;
8 (14) notices of mining locations and declaratory statements;
9 (15) estrays and lost property;
10 (16) a book containing appraisalment of state lands; and
11 (17) other writings that are required or permitted by law to be recorded.”
12

13 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.
14

15 **NEW SECTION. Section 5. Retroactive applicability.** [This act] applies retroactively, within the
16 meaning of 1-2-109, to deaths of holders of nonprobate interests occurring after July 1, 1979.
17

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