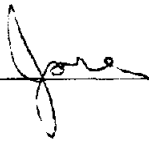


House BILL NO. 424

INTRODUCED BY



A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING STATE INHERITANCE, ESTATE, AND GENERATION-SKIPPING TAXES; AMENDING SECTIONS 7-4-2613, 7-14-4654, 13-2-402, 15-1-205, 15-1-211, 15-1-406, 15-1-501, 15-1-503, 15-30-136, 60-11-1110, 72-1-103, 72-3-607, 72-3-618, 72-3-631, 72-3-807, AND 72-3-1004, MCA; REPEALING SECTIONS 35-21-422, 72-3-1006, 72-4-304, 72-14-303, 72-16-101, 72-16-102, 72-16-201, 72-16-202, 72-16-203, 72-16-204, 72-16-205, 72-16-206, 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214, 72-16-215, 72-16-216, 72-16-217, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304, 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314, 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-331, 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339, 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347, 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413, 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421, 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434, 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442, 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451, 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459, 72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472, 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480, 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-501, 72-16-502, 72-16-503, 72-16-504, 72-16-505, 72-16-601, 72-16-602, 72-16-603, 72-16-604, 72-16-605, 72-16-606, 72-16-607, 72-16-608, 72-16-609, 72-16-610, 72-16-611, 72-16-612, 72-16-701, 72-16-702, 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804, 72-16-805, 72-16-901, 72-16-902, 72-16-903, 72-16-904, 72-16-905, 72-16-906, 72-16-907, 72-16-908, 72-16-909, 72-16-910, 72-16-911, 72-16-912, 72-16-1001, 72-16-1002, 72-16-1003, 72-16-1004, 72-16-1005, 72-16-1006, AND 72-16-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

2
3 **Section 1.** Section 7-4-2613, MCA, is amended to read:

4 **"7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the
5 appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or
6 by the use of prepared blank forms:

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

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

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

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

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

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

29 ~~(c)~~(b) a description of the property;

30 (4) certificates of births and deaths;

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

15

16 **Section 2.** Section 7-14-4654, MCA, is amended to read:

17 **"7-14-4654. Exemption from certain state taxes.** ~~All such revenue~~ Revenue bonds issued pursuant

18 to this part and the interest or income ~~therefrom~~ from those bonds are exempt from all taxation in this

19 state, ~~other than gift, inheritance, and estate taxes.~~"

20

21 **Section 3.** Section 13-2-402, MCA, is amended to read:

22 **"13-2-402. Other reasons for cancellation.** The election administrator shall cancel the registration

23 of an elector:

- 24 (1) at the written request of the registered elector;
- 25 (2) if a certificate of the death of the elector is filed or if the elector is reported as deceased ~~by the~~
- 26 ~~department of public health and human services in the department's reports submitted to the county under~~
- 27 ~~72-16-217;~~
- 28 (3) if the elector is of unsound mind as established by a court;
- 29 (4) if the incarceration of the elector in a penal institution for a felony conviction is legally
- 30 established;

1 (5) if a certified copy of a court order directing the cancellation is filed with the election
2 administrator;

3 (6) if the elector is successfully challenged and not allowed to vote at an election upon
4 determination of an election judge; or

5 (7) if a notice is received from another county or state that the elector has registered in that county
6 or state."
7

8 **Section 4.** Section 15-1-205, MCA, is amended to read:

9 **"15-1-205. Biennial report -- contents.** (1) The department shall transmit to the governor 20 days
10 before the meeting of the legislature and make available to the legislature a report of the department
11 showing all the taxable property of the state, counties, and cities and its value. The department shall follow
12 the provisions of 5-11-210 in preparing the report.

13 (2) The report or supplements to the report may also include:

14 (a) the gross dollar amount of revenue loss attributable to:

15 (i) personal income and corporation license tax exemptions;

16 (ii) property tax exemptions for which application to the department is necessary;

17 (iii) deferral of income;

18 (iv) credits allowed against Montana personal income tax or Montana corporation license tax,
19 reported separately;

20 (v) deductions from income; and

21 (vi) any other identifiable preferential treatment of income or property;

22 (b) any change in tax revenue of the state or any unit of local government attributable to a change
23 in federal tax law; and

24 (c) any change in the revenue of any unit of local government attributable to a change in state tax
25 law.

26 (3) The data described in subsection (2), if reported, must be related to the income and age of the
27 taxpayer whenever the information is available.

28 (4) (a) When reporting the data described in subsection (2)(a), the department shall identify any
29 known purpose of the preferential treatment.

30 (b) Based upon the purpose of the preferential treatment, the department shall outline the available

1 data necessary to determine the effectiveness of the preferential treatment.

2 (5) In reporting the data described in subsection (2), the department shall report any comparable
3 data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state that the
4 department may choose.

5 (6) The department shall identify in a separate section of the report any changes that have been
6 made or that are contemplated in property appraisal or assessment.

7 (7) The department may include a report, prepared by the department of transportation, showing
8 the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding
9 states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state
10 price structures.

11 ~~(8) The department shall include the inheritance tax information required by 72-16-202 in a~~
12 ~~separate section of the report."~~

13

14 **Section 5.** Section 15-1-211, MCA, is amended to read:

15 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall
16 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

17 (a) The tax review procedure described in this section applies to all taxes administered by the
18 department and to all issues arising from the administration of taxes, ~~except inheritance taxes, estate taxes,~~
19 ~~property taxes,~~ and the issue of whether an employer-employee relationship existed between the taxpayer
20 and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the
21 employment relationship was that of an independent contractor. The procedure applies to any revised
22 assessment of centrally assessed property taxed pursuant to chapter 23.

23 (b) The term "taxpayers", as used in this section, includes all persons determined by the
24 department to have a potential tax liability.

25 (2) (a) If the department determines that a request for a refund should be denied in whole or part,
26 it shall notify the taxpayer of the determination. If the department determines that a person has failed to
27 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the
28 running of any applicable statute of limitations regarding the assessment of the tax.

29 (b) A notice under this section must clearly state:

30 (i) the reasons for the department's determination that a refund is not due or that tax plus interest

- 1 and penalty, if any, ~~is~~ are due;
- 2 (ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final
3 department decision, and the taxpayer's right to a review of determinations by the department of labor and
4 industry and board of labor appeals of whether an employer-employee relationship existed between the
5 taxpayer and certain individuals or whether the employment relationship was that of an independent
6 contractor;
- 7 (iii) that failure to notify the department within 30 days will result in a forfeiture of the taxpayer's
8 right to contest the department's determination under this section or to file an appeal with the state tax
9 appeal board;
- 10 (iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does
11 not agree with an assessment or pay the amount assessed;
- 12 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the
13 taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days;
14 and
- 15 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the
16 tax.
- 17 (3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the
18 determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is
19 not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer
20 is objecting to a determination that an employer-employee relationship existed between the taxpayer and
21 individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not
22 notify the department within 30 days:
- 23 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;
- 24 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax
25 appeal board; and
- 26 (iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.
- 27 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer
28 disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other
29 information to the administrator of the division that administers the tax or to the administrator's designee
30 within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may

1 be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An
2 informal conference is not subject to the Montana Administrative Procedure Act.

3 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer
4 disagrees with the department's determination that an employer-employee relationship existed between the
5 taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must
6 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and
7 39-51-2410.

8 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),
9 the administrator or a designee shall issue a written decision addressing the taxpayer's objections and
10 describing the reasons for the determination. The administrator's decision must also clearly set forth the
11 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director
12 of revenue.

13 (4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the
14 administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may
15 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30
16 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer
17 waives any further right to review or appeal and a warrant for distraint may be issued without further
18 opportunity to be heard on the assessment.

19 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision
20 pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and
21 any other information to the director of revenue or the director's designee within 60 days after the notice
22 referred to in subsection (4)(a) is mailed. The director or the designee may consider written information,
23 hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana
24 Administrative Procedure Act.

25 (c) Within 60 days after the taxpayer has presented the objections, the director or the designee
26 shall issue a written decision addressing the objections and describing the reasons for the decision. The
27 director's decision is the final decision and assessment of the department.

28 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final
29 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the
30 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by

1 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law
2 must continue to accrue.

3 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal
4 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the
5 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the
6 department.

7 (b) If the director notifies the board within 30 days after an appeal is filed that the director has not
8 had an opportunity to review the administrator's decision and the director believes that a review may be
9 helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers
10 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide
11 the taxpayer's objections and reasons for the objections to the director so that the director or the director's
12 designee may review the controversy and issue a decision within the period of the stay granted by the
13 board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal
14 resumed.

15 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the
16 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by
17 mutual consent of the department and the taxpayer. The department shall consent to all reasonable
18 requests for extension of deadlines.

19 (8) (a) The director of revenue or the director's designee is authorized to enter into an agreement
20 with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department
21 for any taxable period.

22 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except
23 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

24 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
25 employee, or agent of this state; and

26 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,
27 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement
28 may not be annulled, modified, set aside, or disregarded."

29
30 **Section 6.** Section 15-1-406, MCA, is amended to read:

1 **"15-1-406. Declaratory judgment.** (1) An aggrieved taxpayer may bring a declaratory judgment
2 action in the district court seeking a declaration that:

3 (a) an administrative rule or method or procedure of assessment or imposition of tax adopted or
4 used by the department of revenue is illegal or improper; or

5 (b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or
6 exceeded the taxing authority of the entity imposing the tax.

7 (2) The action must be brought within 90 days of the date that the notice of the tax due was sent
8 to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in
9 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate
10 all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to
11 all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

12 (3) The taxes that are being challenged under this section must be paid under protest when due
13 as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All
14 other taxes administered by the department, ~~except inheritance and estate taxes,~~ are paid under protest
15 by filing timely claims for refund and by following the uniform tax review procedures of 15-1-211.
16 ~~Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.~~

17 (4) The remedy authorized by this section may not be used to challenge the:

18 (a) market value of property under a property tax unless the challenge is to the legality of a
19 particular methodology that is being applied to similarly situated taxpayers; or

20 (b) legality of a tax other than a property tax, ~~inheritance tax, or estate tax~~ unless the review
21 pursuant to 15-1-211 has been completed.

22 (5) The remedy authorized by this section is the exclusive method of obtaining a declaratory
23 judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this
24 section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section
25 does not affect actions for declaratory judgments under 2-4-506."

26

27 **Section 7.** Section 15-1-501, MCA, is amended to read:

28 **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state
29 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of
30 subsection (6) all money received from the collection of:

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

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

4 (c) liquor license taxes under Title 16; and

5 (d) telephone company license taxes under chapter 53; ~~and~~

6 ~~(e) inheritance and estate taxes under Title 72, chapter 16.~~

7 (2) All money received from the collection of income taxes under chapter 30 ~~of this title~~ must, in
8 accordance with the provisions of subsection (6), be deposited as follows:

9 (a) 91.3% of the taxes to the credit of the state general fund;

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

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

13 (3) All money received from the collection of corporation license and income taxes under chapter
14 31 ~~of this title~~, except as provided in 15-31-702, must, in accordance with the provisions of subsection
15 (6), be deposited as follows:

16 (a) 89.5% of the taxes to the credit of the state general fund;

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

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

20 (4) The department of revenue shall also deposit to the credit of the state general fund all money
21 received from the collection of license taxes and fees and all net revenue and receipts from all other sources
22 under the operation of the Montana Alcoholic Beverage Code.

23 (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the
24 general fund.

25 (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made
26 according to the provisions of the law governing allocation of the tax that were in effect for the period in
27 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed
28 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally
29 accepted accounting principles.

30 (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being

1 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and
 2 penalties are currently being recorded."

3
 4 **Section 8.** Section 15-1-503, MCA, is amended to read:

5 **"15-1-503. Refund of overpayment -- procedure.** (1) When there has been an overpayment of the
 6 inheritance tax collected by county treasurers or any other tax collected by the department of revenue and
 7 there is no law providing for a refund, the department shall refund the amount of the overpayment to the
 8 taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

9 (2) ~~No~~ A refund or payment ~~shall be~~ is not allowed unless a claim is filed by the taxpayer before
 10 the expiration of 5 years from the time that the tax was paid. Within 6 months after the claim is filed, the
 11 department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit
 12 or refund ~~shall~~ must be made to the taxpayer within 60 days after the claim is approved; ~~if~~ If the claim is
 13 disallowed, the department shall ~~se~~ notify the taxpayer and shall grant a hearing on the claim. If the
 14 department disapproves a claim after holding a hearing, the determination of the department may be
 15 reviewed as provided by 15-30-148."

16
 17 **Section 9.** Section 15-30-136, MCA, is amended to read:

18 **"15-30-136. Computation of income of estates or trusts -- exemption.** (1) Except as otherwise
 19 provided in this chapter, "gross income" of estates or trusts means all income from whatever source
 20 derived in the taxable year, including but not limited to the following items:

21 (a) dividends;

22 (b) interest received or accrued, including interest received on obligations of another state or
 23 territory or a county, municipality, district, or other political subdivision of the state, but excluding interest
 24 income from obligations of:

25 (i) the United States government or the state of Montana;

26 (ii) a school district; or

27 (iii) a county, municipality, district, or other political subdivision of the state;

28 (c) income from partnerships and other fiduciaries;

29 (d) gross rents and royalties;

30 (e) gain from sale or exchange of property, including those gains that are excluded from gross

- 1 income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954,
2 as amended;
- 3 (f) gross profit from trade or business; and
- 4 (g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted
5 in a reduction of Montana income tax liability.
- 6 (2) In computing net income, there are allowed as deductions:
- 7 (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal
8 Revenue Code of 1954, as amended;
- 9 (b) taxes paid or accrued within the taxable year, including but not limited to federal income tax,
10 but excluding Montana income tax;
- 11 (c) that fiduciary's portion of depreciation or depletion ~~which~~ that is deductible for federal tax
12 purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;
- 13 (d) charitable contributions that are deductible for federal tax purposes according to section 642(c)
14 of the Internal Revenue Code of 1954, as amended;
- 15 (e) administrative expenses claimed for federal income tax purposes, according to sections 212
16 and 642(g) of the Internal Revenue Code of 1954, as amended, ~~if the expenses were not claimed as a~~
17 ~~deduction in the determination of Montana inheritance tax;~~
- 18 (f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not
19 compensated for by insurance or otherwise, that are deductible for federal tax purposes according to
20 section 165 of the Internal Revenue Code of 1954, as amended;
- 21 (g) net operating loss deductions allowed for federal income tax under section 642(d) of the
22 Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on
23 the decedent's final return;
- 24 (h) Montana income tax refunds or tax refund credits.
- 25 (3) The following additional deductions are allowed in deriving taxable income of estates and trusts:
- 26 (a) any amount of income for the taxable year currently required to be distributed to beneficiaries
27 for the year;
- 28 (b) any other amounts properly paid or credited or required to be distributed for the taxable year.
- 29 (4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a)
30 and (6)."

1 **Section 10.** Section 60-11-1110, MCA, is amended to read:

2 **"60-11-1110. Tax exemption.** Bonds and refunding bonds, their transfer, and their income,
3 including any profits made on their sale, are free from taxation by the state or any political subdivision
4 or instrumentality of the state, ~~except for inheritance and estate taxes.~~"

5

6 **Section 11.** Section 72-1-103, MCA, is amended to read:

7 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent
8 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise
9 requires, in chapters 1 through 5, the following definitions apply:

10 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an
11 individual authorized to make decisions concerning another's health care, and an individual authorized to
12 make decisions for another under a natural death act.

13 (2) "Application" means a written request to the clerk for an order of informal probate or
14 appointment under chapter 3, part 2.

15 (3) "Beneficiary", as it relates to:

16 (a) a trust beneficiary, includes a person who has any present or future interest, vested or
17 contingent, and also includes the owner of an interest by assignment or other transfer;

18 (b) a charitable trust, includes any person entitled to enforce the trust;

19 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

20 (i) an account with POD designation or a security registered in beneficiary form (TOD); or

21 (ii) any other nonprobate transfer at death; and

22 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a
23 trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power
24 of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

25 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

26 (a) an account with POD designation or a security registered in beneficiary form (TOD); or

27 (b) any other nonprobate transfer at death.

28 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate
29 succession from the parent whose relationship is involved and excludes a person who is only a stepchild,
30 a foster child, a grandchild, or any more remote descendant.

1 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of
2 the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the
3 estate that arise at or after the death of the decedent or after the appointment of a conservator, including
4 funeral expenses and expenses of administration.

5 (b) The term does not include estate or inheritance taxes or demands or disputes regarding title of
6 a decedent or protected person to specific assets alleged to be included in the estate.

7 (7) "Clerk" or "clerk of court" means the clerk of the district court.

8 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
9 person.

10 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs
11 of decedents.

12 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with
13 the relationship of parent and child at each generation being determined by the definition of child and parent
14 contained in this section.

15 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property
16 and when used as a verb means to dispose of real or personal property by will.

17 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3,
18 in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or
19 trustee is the devisee and the beneficiaries are not devisees.

20 (13) "Disability" means cause for a protective order as described by 72-5-409.

21 (14) "Distributee" means any person who has received property of a decedent from the decedent's
22 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only
23 to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of
24 a testamentary trust to whom the trustee has distributed property received from a personal representative
25 is a distributee of the personal representative. For purposes of this provision, "testamentary trustee"
26 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

27 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject
28 to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

29 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

30 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

1 (18) "Foreign personal representative" means a personal representative appointed by another
2 jurisdiction.

3 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested
4 persons.

5 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with
6 POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar
7 benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or
8 dispositive, appointive, or nominative instrument of any similar type.

9 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
10 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

11 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and
12 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

13 (23) "Incapacitated person" has the meaning provided in 72-5-101.

14 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by
15 the clerk of court for probate of a will or appointment of a personal representative.

16 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and
17 any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or
18 protected person. The term also includes persons having priority for appointment as personal representative
19 and other fiduciaries representing interested persons. The meaning as it relates to particular persons may
20 vary from time to time and must be determined according to the particular purposes of and matter involved
21 in any proceeding.

22 (26) "Issue" of a person means a descendant as defined in subsection (10).

23 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under
24 circumstances that entitle one or more to the whole of the property on the death of the other or others but
25 excludes forms of co-ownership registration in which the underlying ownership of each party is in
26 proportion to that party's contribution.

27 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

28 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and
29 letters of conservatorship.

30 (30) "Minor" means a person who is under 18 years of age.

1 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as
2 security.

3 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the
4 time of death.

5 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,
6 association, government or governmental subdivision or agency, or any other legal or commercial entity.

7 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died
8 without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose
9 relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

10 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency
11 or subdivision, or any other person authorized or obligated by law or a governing instrument to make
12 payments.

13 (36) "Person" means an individual, a corporation, an organization, or other legal entity.

14 (37) "Personal representative" includes executor, administrator, successor personal representative,
15 special administrator, and persons who perform substantially the same function under the law governing
16 their status. "General personal representative" excludes special administrator.

17 (38) "Petition" means a written request to the court for an order after notice.

18 (39) "Proceeding" includes action at law and suit in equity.

19 (40) "Property" includes both real and personal property or any interest in that property and means
20 anything that may be the subject of ownership.

21 (41) "Protected person" has the meaning provided in 72-5-101.

22 (42) "Protective proceeding" has the meaning provided in 72-5-101.

23 (43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of
24 indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out
25 of production under such a title or lease; collateral trust certificate; transferable share; voting trust
26 certificate; in general, any interest or instrument commonly known as a security; any certificate of interest
27 or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant
28 or right to subscribe to or purchase any of the foregoing.

29 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,
30 distribution, and closing.

1 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

2 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of
3 Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

4 (47) "Successor personal representative" means a personal representative, other than a special
5 administrator, who is appointed to succeed a previously appointed personal representative.

6 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent
7 under the decedent's will or chapters 1 through 5.

8 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

9 (50) "Survive" means that an individual has neither predeceased an event, including the death of
10 another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term
11 includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

12 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

13 (52) "Testator" includes an individual of either sex.

14 (53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and
15 however created. The term also includes a trust created or determined by judgment or decree under which
16 the trust is to be administered in the manner of an express trust. The term excludes other constructive
17 trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined
18 in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this
19 title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting
20 trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends,
21 interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under
22 which a person is nominee or escrowee for another.

23 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or
24 confirmed by court.

25 (55) "Ward" means an individual described in 72-5-101.

26 (56) "Will" includes codicil and any testamentary instrument that merely appoints an executor,
27 revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an
28 individual or class to succeed to property of the decedent passing by intestate succession."
29

30 **Section 12.** Section 72-3-607, MCA, is amended to read:

1 **"72-3-607. Inventory -- appraisal -- ~~copy to department of revenue.~~** (1) Within the time required
 2 for the filing of a United States estate tax return plus any extensions granted by the internal revenue
 3 service, a personal representative, who is not a special administrator or a successor to another
 4 representative who has previously discharged this duty, shall prepare and file or mail an inventory, which
 5 inventory ~~shall~~ must include a listing of all property ~~which~~ that:

6 (a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or
 7 otherwise had at the time of ~~his~~ death;

8 (b) the decedent had possessory or dispositive rights over at the time of ~~his~~ death or had disposed
 9 of for less than its fair market value within 3 years of ~~his~~ death; or

10 (c) was affected by the decedent's death for the purpose of ~~inheritance or~~ estate taxes.

11 (2) The inventory ~~shall~~ must include a statement of the full and true value of the decedent's interest
 12 in ~~every~~ each item listed in ~~such~~ the inventory. In this connection, the personal representative shall appoint
 13 one or more qualified and disinterested persons to assist ~~him~~ in ascertaining the fair market value as of the
 14 date of the decedent's death of all assets included in the estate. Different persons may be employed to
 15 appraise different kinds of assets included in the estate. The names and addresses of any appraiser ~~shall~~
 16 must be indicated on the inventory with the item or items ~~he~~ that the appraiser appraised.

17 (3) The personal representative shall send a copy of the inventory to interested persons who
 18 request it, or ~~he~~ may file the original of the inventory with the court. ~~In any event, a copy of the inventory~~
 19 ~~and statement of value shall be mailed to the department of revenue."~~

20
 21 **Section 13.** Section 72-3-618, MCA, is amended to read:

22 **"72-3-618. Persons dealing with personal representative -- protection.** (1) A person who in good
 23 faith and without notice either assists a personal representative or deals with ~~him~~ a personal representative
 24 for value is protected as if the personal representative properly exercised ~~his~~ the personal representative's
 25 power. The fact that a person knowingly deals with a personal representative does not alone require the
 26 person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on
 27 powers of supervised personal representatives ~~which~~ that are endorsed on letters as provided in
 28 72-3-404(3), ~~he~~ a provision in any will or order of court purporting to limit the power of a personal
 29 representative is not effective except as to persons with actual knowledge ~~thereof~~ of the provision.

30 (2) A person is not bound to see to the proper application of estate assets paid or delivered to a

1 personal representative.

2 (3) The protection ~~here~~ expressed in this section extends to instances in which some procedural
3 irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a
4 case in which the alleged decedent is found to be alive. The protection ~~here~~ expressed in this section is not
5 by substitution for that provided by comparable provisions of the laws relating to commercial transactions
6 and laws simplifying transfers of securities by fiduciaries, ~~nor does it in any way limit the provisions of~~
7 ~~72-16-432 and 72-16-433."~~

8

9 **Section 14.** Section 72-3-631, MCA, is amended to read:

10 **"72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to
11 reasonable compensation for ~~his~~ services. ~~Such~~ The compensation ~~shall~~ may not exceed 3% of the first
12 \$40,000 of the value of the estate as reported for federal estate tax ~~or state inheritance tax purposes,~~
13 ~~whichever is larger,~~ purposes and 2% of the value of the estate in excess of \$40,000 as reported for
14 federal estate tax ~~or state inheritance tax purposes, whichever is larger~~ purposes. However, a personal
15 representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.

16 (2) In proceedings conducted for the termination of joint tenancies, the compensation of the
17 personal representative ~~shall~~ may not exceed 2% of the interest passing.

18 (3) In proceedings conducted for the termination of a life estate, the compensation allowed the
19 personal representative ~~shall~~ may not exceed 2% of the value of the life estate if it is terminated in
20 connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal
21 representative's compensation ~~shall~~ may not exceed 2% of the value of the estate, ~~except that it shall~~ but
22 it may not be less than \$100.

23 (4) If there is more than one personal representative, only one compensation is allowed.

24 (5) The court may allow additional compensation for extraordinary services. ~~Such~~ The additional
25 compensation ~~shall~~ may not be greater than the amount ~~which~~ that is allowed for the original compensation.

26 (6) If the will provides for the compensation of the personal representative and there is no contract
27 with the decedent regarding compensation, the personal representative may renounce the provision before
28 qualifying and be entitled to compensation under the terms of this section. A personal representative also
29 may renounce ~~his~~ the right to all or any part of the compensation. A written renunciation of fee may be filed
30 with the court."

1 **Section 15.** Section 72-3-807, MCA, is amended to read:

2 **"72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the
3 estate are insufficient to pay all claims in full, the personal representative shall make payment in the
4 following order:

- 5 (a) costs and expenses of administration;
- 6 (b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of
7 the last illness of the decedent, including compensation of persons attending ~~him~~ the decedent;
- 8 (c) federal estate ~~and Montana state estate and inheritance~~ taxes;
- 9 (d) debts with preference under federal and Montana law;
- 10 (e) other federal and Montana state taxes;
- 11 (f) all other claims.

12 (2) ~~No~~ A preference ~~shall~~ may not be given in the payment of any claim over any other claim of
13 the same class, and a claim due and payable ~~shall~~ is not be entitled to a preference over claims not due."

14

15 **Section 16.** Section 72-3-1004, MCA, is amended to read:

16 **"72-3-1004. Closing estate by sworn statement of personal representative.** (1) Unless prohibited
17 by order of the court and except for estates being administered in supervised administration proceedings,
18 a personal representative may close an estate by filing with the court no earlier than 6 months after the
19 date of original appointment of a general personal representative for the estate, a verified statement stating
20 that ~~he~~ the personal representative, or a successor prior personal representative ~~whom he has succeeded~~,
21 has:

- 22 (a) determined that the time limitation for presentation of creditors' claims has expired;
- 23 (b) fully administered the estate of the decedent by making payment, settlement, or other
24 disposition of all claims ~~which~~ that were presented, expenses of administration, and estate, ~~inheritance,~~
25 ~~and other death~~ taxes, except as specified in the statement, and that the assets of the estate have been
26 distributed to the persons entitled; if any claims remain undischarged, the statement ~~shall~~ must state
27 whether the personal representative has distributed the estate subject to possible liability with the
28 agreement of the distributees, or it ~~shall~~ must state in detail other arrangements ~~which~~ that have been made
29 to accommodate outstanding liabilities; and

30 (c) sent a copy ~~thereof~~ of the statement to all distributees of the estate and to all creditors or other

1 claimants of whom ~~he~~ the personal representative is aware whose claims are neither paid nor barred and
 2 has furnished a full account in writing of ~~his~~ the administration to the distributees whose interests are
 3 affected by the accounting thereby; and

4 ~~(d) complied with the provisions of 72-3-1006.~~

5 (2) If ~~no~~ proceedings involving the personal representative are not pending in the court 1 year after
 6 the closing statement is filed, the appointment of the personal representative terminates."

7
 8 **NEW SECTION. Section 17. Repealer.** (1) Sections 35-21-422, 72-3-1006, 72-4-304, 72-14-303,
 9 72-16-101, 72-16-102, 72-16-201, 72-16-202, 72-16-203, 72-16-204, 72-16-205, 72-16-206,
 10 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214,
 11 72-16-215, 72-16-216, 72-16-217, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304,
 12 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314,
 13 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-331,
 14 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339,
 15 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347,
 16 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413,
 17 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421,
 18 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434,
 19 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442,
 20 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451,
 21 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459,
 22 72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472,
 23 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480,
 24 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-501, 72-16-502, 72-16-503,
 25 72-16-504, 72-16-505, 72-16-601, 72-16-602, 72-16-603, 72-16-604, 72-16-605, 72-16-606,
 26 72-16-607, 72-16-608, 72-16-609, 72-16-610, 72-16-611, 72-16-612, 72-16-701, 72-16-702,
 27 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804,
 28 72-16-805, 72-16-901, 72-16-902, 72-16-903, 72-16-904, 72-16-905, 72-16-906, 72-16-907,
 29 72-16-908, 72-16-909, 72-16-910, 72-16-911, 72-16-912, 72-16-1001, 72-16-1002, 72-16-1003,
 30 72-16-1004, 72-16-1005, 72-16-1006, and 72-16-1007, MCA, are repealed.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0424, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act repealing state inheritance, estate, and generation-skipping taxes; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Inheritance Tax collections are \$14,519,000 in FY97, \$15,000,000 in FY98 and \$15,500,000 in FY99 (HJR2).
2. All Inheritance Tax payments are received within 18 months of the date of death (MDOR).
3. Inheritance Tax payments are evenly distributed over an 18 month period from date of death (MDOR).
4. One third (33%) of all current year inheritance tax collections are received from deaths which occurred in the previous fiscal year (MDOR).
5. Two thirds (67%) of all current year inheritance tax collections are received from deaths which occurred in the current fiscal year (MDOR).
6. One FTE (Grade 8) would be eliminated in FY98, and two additional FTE (Grade 10,13) would be eliminated in FY99(MDOR).

FISCAL IMPACT:

Expenditures:

The proposed legislation would reduce personnel services by \$23,631 and operating expenses by \$3,750 in FY98. The proposed legislation would reduce personnel services by \$86,626 and operating expenses by \$11,250 in FY99.

Revenues:


In addition to FY98-FY99 biennium revenue decreases listed below, inheritance taxes would decrease (\$4,791,000) in FY97 (general fund impact).

Net Impact: (General Fund)

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Inheritance Tax	(\$10,050,000)	(\$15,500,000)
<u>DOR Administrative Impacts</u>	<u>\$27,381</u>	<u>\$97,876</u>
Total	(\$10,022,619)	(\$15,402,124)

TECHNICAL NOTE:

Under the proposed legislation, Montana taxpayers would see a reduction in state inheritance tax, they would not, however, see a reduction in estate or generation-skipping taxes. Montana assessment of the latter two taxes is tied exactly to the credit allowed at the federal level for state death taxes. Repeal of the state estate and generation-skipping taxes will cause Montana taxpayers' money to flow to the federal government, instead of to the State of Montana, with no tax savings to the taxpayer. In FY96, the Department assessed \$5.3 million in estate and generation skipping taxes, which accounted for 37% of total assessments from state death taxes.


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

RICK JORE, PRIMARY SPONSOR DATE

Fiscal Note for HB0424, as introduced

HB 424