House BILL NO. 438

INTRODUCED BY Kottel, Harden, Wm Ryan, Tuss, Kasten, McCann, Hand, Pease, McCulloch, Bergsagel, Iness, Squires, Carey, Schmidt, Cocchiarella, Carlson, Dowell

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PERSONS 65 YEARS OF AGE OR OLDER WHO HAVE RESIDED IN A HOMESTEAD FOR MORE THAN 20 YEARS TO DEFER INCREASES IN PROPERTY TAXES ON THE HOMESTEAD; PROVIDING THAT INTEREST BE PAID ON DEFERRED PROPERTY TAXES AT A RATE OF 6 PERCENT PER YEAR; PROVIDING THAT A COUNTY HAS A LIEN ON PROPERTY ON WHICH PROPERTY TAXES WERE DEFERRED; REQUIRING REPAYMENT OF DEFERRED PROPERTY TAXES WHEN THE PROPERTY CHANGES OWNERSHIP OR IS REMOVED FROM THE STATE; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 11], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Homestead" means the owner-occupied, principal dwelling owned by the taxpayer and the land, not exceeding 1 acre, on which it is located, or a trailer or mobile home used as a residence referred to in Title 70, chapter 32, part 1, regardless of whether the land on which it is situated is owned by the taxpayer. If the homestead is located in a multiunit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the land on which it is built. The percentage attributable to the unit is the value of the unit consisting of the homestead compared to the total value of the building exclusive of the common elements, if any. The value of the land and common elements must be divided equally among the units.

(3) "Tax-deferred property" means the property for which taxes are deferred under [sections 1 through 11].

(4) "Taxes" or "property taxes" means ad valorem taxes and other assessments, fees, and charges, except an assessment for a special improvement district or a rural special improvement district, that constitute a lien against the tax-deferred property and that are required to be paid to the county treasurer.

(5) "Taxpayer" means an individual who has filed a claim for deferral or individuals who have jointly

filed a claim for deferral under [section 2].

NEW SECTION. **Section 2. Claim for deferral of tax on homestead -- eligibility -- effect.** (1) Subject to [section 3], a taxpayer may elect to defer an increase in property taxes on a homestead by filing a claim for deferral with the county assessor of the first year in which deferral is claimed if:

(a) the taxpayer is or, in the case of two or more individuals filing a claim jointly, each individual is 65 years of age or older on April 15 of the year in which the claim is filed; and

(b) the taxpayer has or, in the case of two or more individuals filing a claim jointly, each individual has used the homestead as the individual's principal dwelling for at least 20 consecutive years immediately preceding the calendar year in which the claim is filed.

(2) The amount of property taxes that may be deferred is the difference between the property taxes owed on the property for the base tax year and the amount owed for the current tax year. The base tax year is the tax year immediately preceding the year in which the claim for deferral was first filed. All deferred property taxes for contiguous years have the same base year regardless of the year in which the taxes were deferred. If taxes are not deferred on the property for 1 or more years, the base year becomes the year immediately preceding the year in which the new claim for deferral is filed.

(3) (a) If a guardian or conservator has been appointed for a taxpayer otherwise qualified to obtain deferral of taxes under [sections 1 through 11], the guardian or conservator may act for the taxpayer in complying with the provisions of [sections 1 through 11].

(b) If a trustee of an inter vivos trust that was created by and is revocable by a taxpayer who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under [sections 1 through 11] owns the fee simple estate under a recorded instrument of sale, the trustee may act for the taxpayer in complying with the provisions of [sections 1 through 11].

(4) If the taxpayer elects to defer property taxes for a year, filing a claim for deferral under subsection (1) has the effect of:

(a) deferring the payment of the increase in property taxes levied on the homestead for the taxable year beginning in the calendar year in which the claim is filed;

(b) continuing the deferral of the payment by the taxpayer of the increase in property taxes that are deferred under [sections 1 through 11] for previous years and that have not become delinquent under [section 9]; and

(c) continuing the deferral of the payment by the taxpayer of future property taxes for as long as the provisions of [section 3] are met.

(5) This section does not require the spouse of an individual to file a claim jointly with the individual, even though the spouse may be eligible to claim the deferral jointly with the individual.

NEW SECTION. **Section 3. Property eligible for deferral -- limits.** (1) To qualify for tax deferral under [sections 1 through 11], the property must meet all of the following requirements when the claim is filed and must continue to meet the requirements as long as the payment of taxes by the taxpayer is deferred:

(a) The property must be the homestead of the taxpayer who files the claim for deferral, except for a taxpayer required to be absent from the homestead by reason of ill health.

(b) The person claiming the deferral must, solely or together with the person's spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale, or two or more persons must together own or be purchasing the fee simple estate, with rights of survivorship, under a recorded instrument of sale.

(c) There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule, or regulation applicable to a mortgage, trust deed, land sale contract, or conditional sale contract for which the homestead is security.

(2) (a) The total amount of property taxes deferred may not exceed 50% of the appraised value of the property for which the taxes are deferred.

(b) The total combined amount of property taxes deferred plus the outstanding mortgage or security interest having priority over the deferred property taxes on the property, if any, for which the taxes are deferred may not exceed 80% of the appraised value of the property for which the taxes are deferred.

(3) Property tax may not be deferred for a homestead that is subject to a reverse annuity mortgage loan under Title 90, chapter 6, part 5.

NEW SECTION. **Section 4. Deferral as lien.** (1) (a) The deferred tax constitutes a lien against the tax-deferred property for the payment of the deferred taxes plus interest. The lien must be recorded as provided in [section 6].

(b) The lien for deferred taxes attaches to the property on July 1 of the first year in a series of contiguous years in which the deferred taxes are assessed. All deferred property taxes for contiguous years have the same priority regardless of the year in which the taxes were deferred. If taxes are not deferred on the property for 1 or more years, another lien attaches to the property on July 1 of the year in which the newly deferred taxes are assessed.

(c) The deferred property tax lien has the same priority as other real property tax liens, except that the lien of a mortgage or trust deed that was recorded prior to the attachment of the lien for deferred taxes is considered prior to the lien for deferred taxes.

(2) The lien created by this section is not subject to the provisions of 15-16-401.

NEW SECTION. **Section 5. Listing of tax-deferred property -- interest accrual.** (1) If property taxes are deferred as provided in [sections 1 through 11], the county assessor shall show on the current tax roll the property that is tax-deferred property by an entry clearly designating the property as tax-deferred property.

(2) Interest accrues on the actual amount of taxes deferred at the rate of 6% a year.

NEW SECTION. **Section 6. Recording liens in county -- recording to constitute notice of state lien.** (1) In each county where there is tax-deferred property, the county assessor shall record in the mortgage records of the county a list of tax-deferred properties in that county. The list must contain a description of the property as entered on the assessment roll, together with the name of the owner.

(2) The recording of the tax-deferred properties under subsection (1) is notice that the county claims a lien against those properties in the amount provided in [section 4(1)(a)], even though the amount of taxes, interest, or fees is not listed.

(3) The county assessor is not required to pay any filing, indexing, or recording fees in connection with the recording, release, or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made.

NEW SECTION. **Section 7. Notice to taxpayer.** (1) On or before February 15 of each year, the county assessor shall send a notice to each taxpayer who has claimed deferral of property taxes in the county for the previous tax year. The notice must:

(a) inform the taxpayer that the property taxes were deferred in the prior tax year;

(b) inform the taxpayer that a claim must be filed annually;

(c) show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing to January 1 of the current year;

(d) inform the taxpayer that voluntary payment of the deferred taxes may be made at any time; and

(e) contain other information necessary to facilitate administration of the property tax deferral program.

(2) The county assessor shall mail the notice required under subsection (1) to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the assessor to be the correct address of the taxpayer.

NEW SECTION. **Section 8. Events requiring payment of deferred tax and interest.** All deferred property taxes, including accrued interest, become payable as provided in [section 9] when:

(1) the taxpayer or, if there was more than one claimant, the survivor of the taxpayers dies;

(2) the tax-deferred property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from the tax-deferred property by reason of ill health;

(3) the property for which property taxes were deferred is sold, a contract to sell is entered into, or some person other than the taxpayer who claimed the deferral becomes the owner of the property;

(4) the tax-deferred property is moved out of the county or state; or

(5) nondeferred property taxes against the property for which property taxes were deferred are more than 2 years delinquent.

NEW SECTION. **Section 9. Time for payment -- delinquencies.** (1) When any of the circumstances listed in [section 8] occur:

(a) the deferral of taxes must continue for the assessment year in which the circumstance occurs; and

(b) the amount of deferred property taxes, including accrued interest, for all years is due and payable to the department on June 30 of the year following the calendar year in which the circumstance occurs, except as provided in subsection (2).

(2) Notwithstanding the provisions of subsection (1)(b), when the tax-deferred property is to be

moved out of the county or state, the amount of deferred taxes is due and payable 5 days before the date of removal of the property from the state.

(3) Except as provided in [section 10], if the amounts due are not paid on the indicated due date as provided in this section, the amounts are considered delinquent as of that date and the property is subject to property tax collection procedures as provided in this title.

NEW SECTION. **Section 10. Election by spouse to continue tax deferral -- extension of time to file claim.** (1) When any of the circumstances listed in [section 8(1) or (2)] occur, a spouse who was not eligible to or who did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under [section 2] if:

(a) the spouse is or will be 65 years of age or older not later than 6 months from the date the circumstance occurs; and

(b) the property is the homestead of the spouse and meets the limitations of [section 3(2)].

(2) A spouse who does not meet the age requirements of subsection (1)(a) but who is otherwise qualified to continue the property in its tax-deferred status under subsection (1) may continue the deferral of property taxes that were deferred in previous years by filing a claim within the time and in the manner provided under [section 2]. If a spouse who is eligible for continuing the deferral of taxes previously deferred under this subsection reaches 62 years of age prior to April 15 of any year, the spouse may elect to continue the deferral of previous years' taxes deferred under this subsection and may elect to defer the current assessment year's taxes on the homestead by filing a claim within the time and in the manner provided under [section 2]. Payment of the taxes levied on the homestead and deferred under this subsection and payment of taxes levied on the homestead in the current assessment year and in future years may be deferred in the manner provided in and subject to the provisions of [sections 1 through 11].

(3) Notwithstanding that [section 2] requires a claim to be filed no later than April 15, if the department determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before April 15, the claim may be filed within 180 days after the taxes are due and payable under [section 8].

NEW SECTION. **Section 11. Payment of deferred taxes and interest.** (1) All payments of deferred taxes must be made to the county treasurer.

(2) Subject to subsection (3), all or part of the deferred taxes and accrued interest may at any time be paid to the county treasurer by:

(a) the taxpayer; or

(b) any person having or claiming a legal or equitable interest in the property.

(3) A person referred to in subsection (2)(b) may make payments of deferred taxes and accrued interest only if the taxpayer does not object within 30 days after the county treasurer mails a notice to the taxpayer that payment has been tendered.

(4) A payment made under this section must be applied first against accrued interest and any remainder against the deferred taxes. The payment does not affect the deferred tax status of the property. Unless otherwise provided by law, the payment does not give the person paying the taxes an interest in the property or a claim against the estate, in the absence of a valid agreement to the contrary.

(5) When the deferred taxes and accrued interest are paid in full and the property is no longer subject to tax deferral, the county treasurer shall prepare and record in the county where the property is located a satisfaction of deferred property tax lien.

(6) All money received from the payment of deferred taxes, including interest, must be credited to the various funds in which property taxes are distributed in the tax year in which the payment is received.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15, chapter 16, apply to [sections 1 through 11].

NEW SECTION. **Section 13. Applicability.** [Sections 1 through 11] apply to tax years beginning after December 31, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0438, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act allowing persons 65 years of age or older who have resided in a homestead for more than 20 years to defer increases in property taxes on the homestead; providing that interest be paid on deferred property taxes at a rate of 6 percent per year; providing that a county has a lien on property on which property taxes were deferred; requiring repayment of deferred property taxes when the property changes ownership or is removed from the state; and providing an applicability date.

ASSUMPTIONS:
1. Under the proposal the homeowner must be at least 65 years of age and have used the home as principal dwelling for at least 20 consecutive years immediately preceding application for deferral.
2. The proposal is effective beginning tax year 1998.
3. In tax year 1998 there will be 32,462 owner-occupied residences owned by taxpayers age 65 or older in Montana who have lived in that residence for 20 or more years.
4. Participation rate for those who qualify will be 6%. (The highest participation rate of other states' deferral programs is 6% of the eligible population (Oregon) NCSL survey.)
5. Assume an increase in property tax of $100 between tax year 1997 and tax year 1998. Property tax deferred in FY99 (for tax year 1998) would be $195,000 under the proposal. Approximately 25% of residential property taxes go to the state 101 mills. The deferred amount to the state would be $48,750.
6. The proposal would require 1 FTE, grade 10 to review and process the applications. Personal services expenses would be $23,596 for each year of the biennium; operating expenses would be $2,250 associated with the additional FTE and $7,100 for the development and printing of the application forms, mailing the application, and local newspaper advertisements each year of the biennium; and there would be a one time equipment cost of $6,419 in FY98.
7. The proposal requires the Department of Revenue to notify taxpayers, on a yearly basis, of their deferred taxes and interest due to the proposal. Currently, the department does not track taxes due or payment of taxes on its computer system. This function is done by county government. The department would, therefore, have to pay the counties to provide the required notice detailing the amount of unpaid deferred taxes and interest. The cost of this is dependent upon the ability of the counties to assimilate this requirement into their systems.

FISCAL IMPACT:
Expenditures: (General Fund)

	FY98 Difference	FY99 Difference
FTE	1.00	1.00
Personal Services	23,596	23,596
Operations	9,350	9,350
Equipment Costs	6,419	0
Total	39,365	32,946

Revenues:
The property tax deferred in FY99 (for tax year 1998) due the state 101 mill accounts would be $48,750 under the proposal.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Programming costs for individual counties to track the deferrals and interest could be high. This is dependent upon how the county's computer system is currently set up.

Property tax deferred in FY99 (for tax year 1998) due local governments would be $146,250.

Dave Lewis 2-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DEB KOTTEL, PRIMARY SPONSOR DATE

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