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61st Montana Legislature

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February 18, 2010

To: Residential and Commercial Property Reappraisal Subcommittee
Agricultural and Forest Land Reappraisal Subcommittee

From: Lee Heiman, Staff Attorney

Subject: Feasibility of recertifying taxable values and revising mill levies.

The following is a simplified timeline of property tax actions culminating in the collection of property taxes for a tax year. The timeline applies only to local governments, not schools (which have their own timeline) or special districts, and only highlights major actions.

January 1 -- General assessment day -- 15-8-201, MCA

July 1 -- Report by the Department of Revenue (Department) to the counties of centrally assessed property -- 15-23-106, MCA

July 1 to December 31 -- County tax appeal board, but longer if not taxpayer's fault -- 15-15-101, MCA

First Monday in August -- Certification of taxable values -- 15-10-202, MCA

First Monday in August -- Property tax record to be furnished to municipalities -- 7-6-4410, MCA

Second Monday in August or within 45 calendar days after receiving certified taxable values -- Fixing tax levy -- 7-6-4036, MCA

Second Monday in August or within 45 calendar days of receiving certified taxable values -- Budget finally approved -- 7-6-4024, MCA

Third Monday in August -- Clerk and recorder to report mill levy -- 15-10-305, MCA

October 1 or 60 days after receipt of taxable values -- Copy of the final budget together with a statement of tax levies to the Department of Administration -- 7-6-4003, MCA

First Monday in October -- A copy of the property tax record to each city in the county by treasurer -- 7-6-4412, MCA

Second Monday in October -- Department to compute property tax record and enter taxes -- 15-10-305, MCA

Within 10 days of department property tax record -- Tax notices sent with first and second dates and amounts -- 15-16-101, MCA

November 30 of each year or within 30 days after the tax notice is postmarked -- Time for first payment -- 15-16-102, MCA

May 31 of next year -- Time for second payment -- 15-16-102, MCA

Because property tax year 2009 was the first year of the reappraisal cycle and was the year the new exemptions, rates, and mitigation strategies were under consideration by the 2009 Legislature, Chapter 483, Laws of 2009, the reappraisal bill, had a section addressing missed property tax deadlines:

Section 12. Extension of 2009 deadlines relating to property taxation. As a result of the changes in the mitigation strategy of reappraisal for class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes. [Emphasis added]

Neither statute nor Sec. 12, Ch. 483, L. 2009, provides for the recertification of taxable values and starting the property tax timeline anew. Section 12, Ch. 483, L. 2009, allows for an extension of deadlines, but not for their reimposition. In my opinion there are only two ways a recertification could happen: under a timely discovery of a mistake or by court order.

The need for recertification arises because some taxing jurisdictions may lose enough taxable value through appeals to affect property tax levies. A taxpayer disputes the valuation of property and appeals the valuation under the informal AB-26 process or through the county tax appeals board, or both, and upon a decision favorable to the taxpayer, the county loses part or all of the appealed value (unless of course the taxpayer appeals based upon too low a valuation!). The county taxable valuation loss is the product of a statutory process with an expected loss of value. The original valuation being appealed may have originated in an appraisal error, but the outcome of the appeal is statutorily expected. It is my opinion that a loss of taxable valuation due to property tax valuation appeals is not due to an error.

In an action by the Department or a taxing entity in which a computational or ministerial error resulted in a misstatement of taxable value -- either higher or lower -- it would be the duty of the entity causing the error to correct the error if the correction could be done feasibly under the timelines for collecting property taxes. An example of such an error would be if there was a typographical error in the rate applied to the taxable market value of a class of property. This is a demonstrable error. The valuation change is not a result of a legal process. If feasible, the valuation misstatement should be corrected with a recertification or other appropriate measure.

The other alternative is by a law suit. A court could determine that the process must be restarted, but it is highly unlikely that a court could make such a decision within the timeframes necessary to affect property taxes that have already been billed.

As noted in the timeline, in October taxpayers are billed for a set amount of taxes. The first payment is due around November 1, with a second installment due May 31 of the following calendar year. I do not know whether it is possible to implement a state wide recertification that would allow sufficient notification for a May 31, 2010, payment change. In fact, the extent of the reduction in taxable value due to property valuation appeals may not be ascertainable within a time period that would allow any timely change in taxable valuation. Any change in a certification of taxable value would trigger a recomputation of taxes on properties in all classes, and the classes having a static value would end up paying more to offset the reduction in the value of revalued properties.

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