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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: Loss of Taxing Authority for Local Governments - Replace Protested Payments

Issue I

What is the effect on local mill levy authority of diminished property tax revenue caused by a loss of taxable value resulting from AB-26 and other valuation adjustments?

Local government mill levies were set last September based upon certified total taxable values of the local government provided by the Department of Revenue in August. Some local governments have estimated that an appreciable amount of taxable value may have been subtracted from their taxable value due to reductions in property value under the AB-26 process and county tax appeals. The number of mills levied against the reduced taxable value will result in less revenue, and thus local governments are afraid that the reduced revenue will translate into a reduced mill levy authority under section 15-10-420(1), MCA. The fear is that if a local government levied enough mills to raise \$2 million under the certified taxable value, they may receive only \$1.9 million under the reduced taxable value and be held to a \$1.9 million base for ensuing years.

The applicable part of section 15-10-420(1), MCA, reads as follows:

(a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to

impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.[emphasis added.]

The authorized mill levies each year are based upon the "property taxes actually assessed in the prior year", not on taxes actually collected. The applicable dictionary definition of "assess" is given as:

2 a : to impose (as a tax) according to an established rate b : to subject to a tax, charge, or levy [In Merriam-Webster Online Dictionary. Retrieved February 1, 2010, from <http://www.merriam-webster.com/dictionary/assess>].

It is my opinion that for the purposes of determining the authorized mill levies for property tax in 2010, a local government should use as a base the dollar amount of product of the mill levy against the certified taxable value provided by the Department of Revenue, and not the revenue received by the assessment. This will result in a return to full anticipated revenue for the November 2010 and May 2011 payments but does nothing to replace the difference between the levied-for amount and actual receipts for tax year 2009.

Issue II

Availability of Protested Taxes

A related issue is use and subsequent repayment, if necessary, of property taxes paid under protest. For a taxpayer to receive a refund under the AB-26 process and through the county tax appeal board or state tax appeal board process, the taxpayer must have paid under protest the appropriate portion of the tax to the treasurer. Section 15-1-402, MCA, governs protested tax payments: the amount, deposit, taxing jurisdiction use, and repayment, including a special levy exemption under section 15-10-420(9)(a)(ii), MCA. If the protest is found in favor of the taxpayer, all or a part of the protested payment must be refunded to the taxpayer with interest. If a taxing jurisdiction, other than the state, has spent taxes paid under protest, the local government is authorized to make a special levy, if necessary, for the repayment. This special levy is an exception to the general rule for authorized tax levies under section 15-10-420, MCA:

- (9) (a) The provisions of subsection (1) do not prevent or restrict:
 - (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
 - (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
 - (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;
 - (iv) a levy for the support of a study commission under 7-3-184;
 - (v) a levy for the support of a newly established regional resource authority; or
 - (vi) the portion that is the amount in excess of the base contribution of a

governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year. [emphasis added]

The ability of a taxing jurisdiction to use taxes paid under protest is governed by section 15-1-402, MCA. Subsections (5) and (7) of section 15-1-402, MCA, read:

(a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of subsections (5)(a) and (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409.

....

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

.... [emphasis added]

Under the terms of section 15-1-402(5), MCA, property taxes paid under protest are not available for a local government use until the second and subsequent years of the payment protest, unless the subject property is centrally assessed under section 15-23-101, MCA (the general description of centrally assessed property). Because the protests here are related to reappraisal, they would be in classes three (agriculture), four (residential and commercial), and ten (forest lands). The amount of centrally assessed property in those classes would be minimal if there is any at all. The limitation of the use of taxes paid under protest to the second and subsequent years of the protest limits the amount of available funds for local governments because, as discussed in Issue I, by the second year revenue should have stabilized based upon the higher pre-appraisal taxing authority.

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