

1 HOUSE BILL NO. 469

2 INTRODUCED BY MCNUTT, GILLAN, MCCHESENEY, OLSON, J. PETERSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PROPERTY OWNED BY COMMERCIAL
5 MOBILE RADIO SERVICE PROVIDERS IS TAXED AS CLASS FOUR COMMERCIAL PROPERTY AND CLASS
6 EIGHT PERSONAL PROPERTY; CLARIFYING THAT PROPERTY OWNED BY COMMERCIAL MOBILE RADIO
7 SERVICE PROVIDERS MAY NOT BE CENTRALLY ASSESSED FOR PROPERTY TAX PURPOSES;
8 AMENDING SECTIONS 15-1-402, 15-6-138, 15-6-156, AND 15-23-101, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

10
11 WHEREAS, the Montana Legislature recognizes that the property of commercial mobile radio service
12 providers has been historically taxed as class four commercial property and class eight business equipment
13 property; and

14 WHEREAS, class eight business equipment is taxed at 3% of market value; and

15 WHEREAS, the Montana Department of Revenue has determined that the property of commercial mobile
16 radio service providers is to be centrally assessed and taxed as class thirteen property; and

17 WHEREAS, class thirteen property is taxed at 6% of market value; and

18 WHEREAS, the central assessment of the property owned by commercial mobile radio service providers
19 would double the taxes on this type of property and would impose an unnecessary and inappropriate tax burden
20 on commercial mobile radio service providers and their customers.

21 THEREFORE, the Montana Legislature concludes that good tax policy requires that the property of
22 commercial mobile radio service providers should continue to be locally assessed and taxed as class four
23 commercial property and class eight business equipment.

24

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

26

27 **Section 1.** Section 15-1-402, MCA, is amended to read:

28 **"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a
29 property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay
30 under written protest that portion of the property tax or fee protested.

1 (b) The protested payment must:
2 (i) be made to the officer designated and authorized to collect it;
3 (ii) specify the grounds of protest; and
4 (iii) not exceed the difference between the payment for the immediately preceding tax year and the
5 amount owing in the tax year protested unless a different amount results from the specified grounds of protest,
6 which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

7 (c) If the protested property tax or fee is on property that is subject to central assessment pursuant to
8 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested
9 payment for each county in which a protested payment was made. By November 1 of each year, the department
10 shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central
11 assessment under 15-23-101(1)(a) and ~~(2)~~ (1)(b) who have filed a timely appeal under 15-1-211.

12 (2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing
13 a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1)(a) or ~~(2)~~ (1)(b),
14 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under
15 protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

16 (3) If a protested property tax or fee is payable in installments, a subsequent installment portion
17 considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced
18 to recover the subsequent installment. The determination of the action or suit commenced to recover the first
19 installment portion paid under protest determines the right of the party paying the subsequent installment to have
20 it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not
21 paid by the taxpayer plus interest from the date the subsequent installment was due.

22 (4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county
23 or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to
24 be designated as a protest fund and must be retained in the protest fund until the final determination of any action
25 or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other
26 local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money
27 of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision
28 creating the special protest fund does not apply to any payments made under protest directly to the state.

29 (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to
30 15-23-101 must be remitted by the county treasurer to the department.

1 (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant
2 to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the
3 funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue
4 fund.

5 (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited
6 in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special
7 revenue fund.

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

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

21 (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not
22 commenced within the time specified or if the action is commenced and finally determined in favor of the
23 department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the
24 protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed
25 property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax
26 belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses
27 charged to the local government units.

28 (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the
29 treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the
30 final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to

1 the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or
2 fee that the person holding the judgment is entitled to recover, together with interest from the date of payment
3 under protest.

4 (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund
5 provided for in 17-6-203 for the applicable period.

6 (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer
7 shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

8 (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the
9 protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which
10 local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the
11 treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction
12 is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state
13 treasurer as provided in subsection (6)(b).

14 (ii) For an adverse protest action against the state for centrally assessed property, the department shall
15 refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and
16 from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an
17 adverse protested action from the centrally assessed property tax state special revenue fund may not exceed
18 the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii)
19 and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred
20 to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested
21 action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments
22 to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder
23 of the refund proportionally from the state general fund and from money deposited in the state special revenue
24 fund levied pursuant to 15-10-107.

25 (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is
26 allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The
27 taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of
28 payment under protest until the date of final resolution of the protest and at the combined rate of the federal
29 reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution,
30 plus 4 percentage points, from the date of final resolution of the protest until refund is made.

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

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

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

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

9 (8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is
10 not owed."

11

12 **Section 2.** Section 15-6-138, MCA, is amended to read:

13 **"15-6-138. Class eight property -- description -- taxable percentage.** (1) Class eight property
14 includes:

15 (a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

16 (b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies
17 except those included in ~~class five~~ 15-6-135;

18 (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage
19 tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication
20 towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment
21 that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those
22 included in ~~class five~~ 15-6-135;

23 (d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and
24 personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors
25 as provided in 15-6-220, and supplies except those included in ~~class five~~ 15-6-135;

26 (e) all goods and equipment that are intended for rent or lease, except goods and equipment that are
27 specifically included and taxed in another class;

28 (f) special mobile equipment as defined in 61-1-101;

29 (g) furniture, fixtures, and equipment, except that specifically included in another class, used in
30 commercial establishments as defined in this section;

1 (h) x-ray and medical and dental equipment;
 2 (i) citizens' band radios and mobile telephones;
 3 (j) commercial mobile radio service provider personal property, including but not limited to radio
 4 communication devices, mobile stations and receivers, land stations, and associated control and relay stations;
 5 ~~(j)~~(k) radio and television broadcasting and transmitting equipment;
 6 ~~(k)~~(l) cable television systems;
 7 ~~(l)~~(m) coal and ore haulers;
 8 ~~(m)~~(n) theater projectors and sound equipment; and
 9 ~~(n)~~(o) all other property that is not included in any other class in this part, except that property that is
 10 subject to a fee in lieu of a property tax.

11 (2) As used in this section, the following definitions apply:

12 (a) "coal and ore haulers" "Coal and ore haulers" means nonhighway vehicles that exceed 18,000
 13 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a
 14 mining or quarrying environment.

15 ~~(b)~~(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or
 16 service, wholesale, retail, or food-handling business.

17 (c) "Commercial mobile radio service provider" means a provider of commercial mobile radio service as
 18 defined in 47 CFR 20.3.

19 ~~(3)~~(3) Class eight property is taxed at 3% of its market value.

20 ~~(4)~~(4) The class eight property of a person or business entity that owns an aggregate of \$20,000 or less
 21 in market value of class eight property is exempt from taxation."
 22

23 **Section 3.** Section 15-6-156, MCA, is amended to read:

24 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
 25 subsections (2)(a) through ~~(2)(g)~~ (2)(h), class thirteen property includes:

26 (a) electrical generation facilities, except wind generation facilities classified under 15-6-157, of a
 27 centrally assessed electric power company;

28 (b) electrical generation facilities, except wind generation facilities classified under 15-6-157, owned or
 29 operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant
 30 to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

1 (c) noncentrally assessed electrical generation facilities, except wind generation facilities classified under
2 15-6-157, owned or operated by any electrical energy producer; and

3 (d) allocations of centrally assessed telecommunications services companies.

4 (2) Class thirteen property does not include:

5 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

6 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or
7 15-6-157;

8 (c) allocations of electric power company property under 15-6-141;

9 (d) electrical generation facilities included in another class of property;

10 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;

11 (f) property owned by organizations providing telecommunications services and classified under
12 15-6-135;

13 (g) property owned by commercial mobile radio service providers and classified under 15-6-134 and
14 15-6-138; and

15 (g)(h) generation facilities that are exempt under 15-6-225.

16 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
17 physically connected generator or generators, associated prime movers, and other associated property, including
18 appurtenant land and improvements and personal property, that are normally operated together to produce
19 electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired
20 steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

21 (b) The term does not include electrical generation facilities used for noncommercial purposes or
22 exclusively for agricultural purposes.

23 (c) The term also does not include a qualifying small power production facility, as that term is defined
24 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
25 electricity other than electric power from a small power production facility and classified under 15-6-134 and
26 15-6-138.

27 (4) Class thirteen property is taxed at 6% of its market value."
28

29 **Section 4.** Section 15-23-101, MCA, is amended to read:

30 **"15-23-101. Properties centrally assessed. (1) The Except as provided in subsection (2), the**

1 department shall centrally assess each year:

2 ~~(1)~~(a) the railroad transportation property of railroads and railroad car companies operating in more than
3 one county in the state or more than one state;

4 ~~(2)~~(b) property owned by a corporation or other person operating a single and continuous property
5 operated in more than one county or more than one state, including but not limited to telegraph, telephone,
6 microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like
7 properties and including, if congress passes legislation that allows the state to tax property owned by an agency
8 created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a
9 public agency created by congress to transmit or distribute electrical energy produced at privately owned
10 generating facilities, not including rural electric cooperatives;

11 ~~(3)~~(c) all property of scheduled airlines;

12 ~~(4)~~(d) the net proceeds of mines, except bentonite mines;

13 ~~(5)~~(e) the gross proceeds of coal mines; and

14 ~~(6)~~(f) property described in subsections (1)(a) and ~~(2)~~ (1)(b) that is subject to the provisions of Title 15,
15 chapter 24, part 12.

16 (2) The department may not centrally assess property owned by a commercial mobile radio service
17 provider as defined in 15-6-138."

18

19 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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21 NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the
22 meaning of 1-2-109, to property tax years beginning after December 31, 2006.

23

- END -