

SENATE BILL NO. 219

INTRODUCED BY G. BRANAE, J. MCNIVEN, MACDONALD, BROWN, VAN DYK, ARNTZEN, MOSS,
GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS RELATED TO ACCESS TO
PROTESTED PROPERTY TAXES; REVISING THE PROVISIONS RELATED TO A SCHOOL DISTRICT'S
ELECTION ON WHETHER TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE
PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT THE ELECTION
APPLIES ONLY TO CENTRALLY ASSESSED PROPERTY AND INDUSTRIAL PROPERTY THAT IS ASSESSED
ANNUALLY BY THE DEPARTMENT; ALLOWING LOCAL TAXING JURISDICTIONS TO ACCESS PROTESTED
TAXES OF CENTRALLY ASSESSED INDUSTRIAL PROPERTY; REVISING THE CALCULATION OF
GUARANTEED TAX BASE AID FOR A DISTRICT THAT ELECTS TO WAIVE ITS RIGHT TO RECEIVE ITS
PORTION OF CENTRALLY ASSESSED PROTESTED TAXES; AMENDING SECTIONS 15-1-402, ~~AND~~
15-1-409, AND 20-9-366, MCA; AND PROVIDING ~~AN~~ EFFECTIVE DATES AND APPLICABILITY DATE DATES."

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

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

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

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the
amount owing in the tax year protested unless a different amount results from the specified grounds of protest,
which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to
15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested
payment for each county in which a protested payment was made. By November 1 of each year, the department

1 shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central
2 assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

3 (2) A person appealing a property tax or fee pursuant to Title 15, chapter 2 or 15, including a person
4 appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2),
5 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
6 protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

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

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

20 (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to
21 15-23-101 and any ~~centrally assessed~~ protested taxes ON INDUSTRIAL PROPERTY THAT IS ANNUALLY ASSESSED BY
22 THE DEPARTMENT in a school district that has elected to waive its right to protested taxes in a specific year
23 pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in
24 subsections (4)(b)(ii) through (4)(b)(iv).

25 (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant
26 to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the
27 funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue
28 fund.

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

1 revenue fund.

2 (iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be
3 deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest
4 state special revenue fund.

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

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

19 (c) The provisions of ~~subsections (5)(a) and subsection~~ (5)(b) do not apply to a school district that has
20 elected to waive its right to its portion of ~~centrally assessed~~ protested taxes ON CENTRALLY ASSESSED PROPERTY
21 AND ON INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT for that specific year as provided
22 in 15-1-409.

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

30 (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the

1 treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the
2 final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to
3 the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or
4 fee that the person holding the judgment is entitled to recover, together with interest from the date of payment
5 under protest. The department shall refund from the school district property tax protest state special revenue fund
6 the protested portions of property taxes and interest to a taxpayer in a school district in which the school district
7 has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the
8 amount available for the refund in the school district property tax protest state special revenue fund is insufficient
9 to refund the property tax payments, the department shall pay the remainder of the refund from the state general
10 fund.

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

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

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

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

1 fund levied pursuant to 15-10-108.

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

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

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

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

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

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

18

19 **Section 2.** Section 15-1-409, MCA, is amended to read:

20 **"15-1-409. Exclusion of certain property subject to property tax protest -- guarantee tax base --**
 21 **tax refund.** (1) A school district that has centrally assessed property subject to pending property tax protests
 22 shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of
 23 protested taxes under 15-1-402(5)(b) for the previous year.

24 (2) If the school district elects to waive its right to its portion of the protested taxes under subsection (1),
 25 the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable
 26 value of property in the school district ~~that is not subject to a tax protest~~ less the taxable value of the centrally
 27 assessed property for which a school district waived its right to receive its portion of protested taxes. Upon
 28 settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying
 29 any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been
 30 distributed to the school district for each year the school district has elected to waive receiving its portion of the

1 protested taxes.

2 (3) For the purpose of this section, "centrally assessed property" means property that is centrally
 3 assessed pursuant to 15-23-101 and industrial property that is centrally assessed ANNUALLY by the department."

4

5 **SECTION 3. SECTION 20-9-366, MCA, IS AMENDED TO READ:**

6 **"20-9-366. Definitions.** As used in 20-9-366 through 20-9-371, the following definitions apply:

7 (1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school
 8 ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000,
 9 with the quotient divided by the total county elementary ANB count or the total county high school ANB count
 10 used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement
 11 amounts.

12 (2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an
 13 eligible district means the taxable valuation in the previous year of all property in the district, except for property
 14 value disregarded because of protested taxes under 15-1-409(2) or property subject to the creation of a new
 15 school district under 20-6-326, divided by the sum of the district's current year BASE budget amount less direct
 16 state aid and the state special education allowable cost payment.

17 (b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in
 18 the previous year of all property in the district, except for property subject to the creation of a new school district
 19 under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the
 20 district's current year total per-ANB entitlement amount.

21 (3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes,
 22 means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and
 23 divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school
 24 ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB
 25 entitlement amounts.

26 (4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base
 27 ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable
 28 valuation in the previous year of all property in the state, multiplied by 193% and divided by the total sum of either
 29 the state elementary school districts' or the high school districts' current year BASE budget amounts less total
 30 direct state aid.

1 (b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school
2 retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all
3 property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state
4 elementary ANB count or the total state high school ANB amount used to calculate the elementary school
5 districts' and high school districts' current year total per-ANB entitlement amounts."
6

7 NEW SECTION. SECTION 4. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS
8 EFFECTIVE ON PASSAGE AND APPROVAL.

9 (2) [SECTIONS 2 AND 3] ARE EFFECTIVE OCTOBER 1, 2011.

10
11 ~~NEW SECTION. Section 3. Applicability. [This act] applies to tax years beginning after December 31,~~
12 ~~2011.~~

13
14 NEW SECTION. SECTION 5. APPLICABILITY. (1) [SECTION 1] APPLIES RETROACTIVELY, WITHIN THE MEANING
15 OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2010.

16 (2) [SECTIONS 2 AND 3] APPLY TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2011.

17 - END -