

SENATE BILL NO. 294

INTRODUCED BY GEBHARDT, ELLIOTT, PARKER, TROPILA, WITT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE INTEREST RATE APPLIED TO THE REFUND OF PROPERTY TAXES OR FEES PAID UNDER PROTEST; PROVIDING THAT THE STATE SHARE OF PROTESTED PROPERTY TAXES MUST BE REMITTED TO THE STATE TREASURER; PROVIDING THAT A GOVERNING BODY OF A TAXING JURISDICTION MAY ACCESS PROTESTED PROPERTY TAXES; PROVIDING THAT REFUNDS OF PROTESTED PROPERTY TAXES TO TAXPAYERS THAT ARE CENTRALLY ASSESSED MAY BE MADE UP TO 10 YEARS FOLLOWING RESOLUTION OF THE PROTEST; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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 taxes under protest. (1) 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. The protested payment must:

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

(b) specify the grounds of protest; and

(c) 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.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 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 protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

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

paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) ~~All~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (4)(B), ALL property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(B) (I) PROPERTY TAXES THAT ARE LEVIED BY THE STATE MUST BE REMITTED BY THE COUNTY TREASURER TO THE STATE TREASURER.

(II) THE STATE TREASURER SHALL DEPOSIT THAT PORTION OF THE FUNDS LEVIED PURSUANT TO 15-10-107 IN THE STATE SPECIAL REVENUE FUND. THE REMAINDER OF THE FUNDS MUST BE DEPOSITED IN THE STATE GENERAL FUND.

(5) The governing ~~board~~ 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.~~

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

~~———— (b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover,~~

together with interest from the date of payment under protest, at the greater of:

——— (i) ~~the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or~~

——— (ii) ~~6% a year.~~

(B) (I) IF THE ACTION IS FINALLY DETERMINED ADVERSELY TO THE GOVERNMENTAL ENTITY LEVYING THE TAX, THEN THE TREASURER OF THE MUNICIPALITY, COUNTY, OR STATE ENTITY LEVYING THE TAX SHALL, UPON RECEIPT OF A CERTIFIED COPY OF THE FINAL JUDGMENT IN THE ACTION AND UPON EXPIRATION OF THE TIME SET FORTH FOR APPEAL OF THE FINAL JUDGMENT, REFUND TO THE PERSON IN WHOSE FAVOR THE JUDGMENT IS RENDERED THE AMOUNT OF THE PROTESTED PORTIONS OF THE PROPERTY TAX OR FEE THAT THE PERSON HOLDING THE JUDGMENT IS ENTITLED TO RECOVER, TOGETHER WITH INTEREST FROM THE DATE OF PAYMENT UNDER PROTEST.

(II) THE TAXING JURISDICTION SHALL PAY INTEREST AT THE RATE OF INTEREST GENERATED FROM THE POOLED INVESTMENT FUND PROVIDED FOR IN 17-6-203 FOR THE APPLICABLE PERIOD.

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

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction is allowed not more than ~~1 year~~ 10 YEARS from the beginning of the fiscal year following a final resolution of the protest FOR PROPERTY CENTRALLY ASSESSED PURSUANT TO 15-23-101 AND NOT MORE THAN 1 YEAR FOR ALL OTHER PROPERTY. The taxpayer is entitled to interest on the unpaid balance at the ~~greater of the rates~~ rate referred to in ~~subsections (6)(b)(i) and (6)(b)(ii)~~ subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus ~~four~~ TWO percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction 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.

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

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after ~~December 31, 2001~~ OCTOBER 31, 2000, except for refunds of property taxes made after ~~December 31, 2001~~ OCTOBER 31, 2000, and before [the effective date of this act].

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