

HOUSE BILL NO. 315
INTRODUCED BY R. KOOPMAN

A BILL FOR AN ACT ENTITLED: "AN ACT DISTRIBUTING STATE GENERAL FUND SURPLUSES OVER \$50 MILLION TO TAXPAYERS THROUGH A REDUCTION IN STATE EQUALIZATION PROPERTY TAX LEVIES AND DISTRIBUTING THE REMAINDER, IF ANY, PRO RATA TO INDIVIDUAL INCOME TAXPAYERS; ALLOWING TAXPAYERS TO ELECT TO HAVE REFUNDS REMAIN WITH STATE GOVERNMENT; AMENDING SECTION 15-10-420, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. State budget surplus reduction -- reduction of state mills -- direct refunds. (1) (a) If the audited ending general fund balance for a fiscal year exceeds \$50 million, the amount in excess of \$50 million is a budget surplus and must be redistributed to taxpayers as provided in this section.

(b) For each year in which there is a budget surplus determined under subsection (1)(a), the department shall calculate the mill levies under 20-9-331, 20-9-333, and 20-9-360 for the tax year in which the budget surplus occurs by considering the budget surplus as replacement revenue allocated for those levies in the tax year in which the budget surplus occurs. The department shall determine the number of replacement mills by dividing the budget surplus by the statewide value of a mill determined on the total statewide property tax valuation for the tax year in which the surplus occurs. The calculated number of replacement mills must be subtracted first from the maximum number of mills authorized under 20-9-360. If the number of mills available for mill reduction exceeds the maximum mills authorized for levy under 20-9-360, the remainder of the replacement mills must be subtracted from the maximum number authorized under 20-9-331, and if the remaining number of mills available for mill levy reduction exceeds the maximum authorized for 20-9-331, then the resulting remainder of replacement mills must be subtracted from the maximum authorized under 20-9-333. The number of mills imposed for 20-9-331, 20-9-333, and 20-9-360 must be the number of replacement mills subtracted from the maximum mill levy allowed. If a portion of the budget surplus remains unallocated after all three levies are reduced to zero and if the unallocated remainder is greater than \$10 million, then the remaining budget surplus must be distributed as provided in subsection (2).

(c) Notwithstanding the provisions of 15-10-420(1), a levy reduced or suspended pursuant to this subsection (1) may be levied in the following year at the maximum mills authorized or at any number less than

the maximum.

(2)(a)(i) A distributable unallocated surplus remaining after levy reductions under subsection (1)(b) must be distributed pro rata either as a refund directly to individual income taxpayers or retained by state government for projects as determined by taxpayers under subsection (2)(b). The unallocated surplus must be refunded on a pro rata basis to each taxpayer who filed a state income tax return pursuant to 15-30-103 for the applicable year, which is the tax year ending in the 12-month period on or before December 31 in the year 2 years before the year the surplus distribution occurs. Beginning in November of the year in which the surplus occurs, the department shall calculate and issue refunds.

(ii) The pro rata distribution of the amount available for refund must be calculated by the department by dividing the amount available for refund determined under subsection (1)(b) by the total individual income tax liability as determined by the department from the year prior to the applicable year for which tax filings for refunds are considered.

(iii) The department shall calculate the amount of each taxpayer's refund by multiplying the amount of tax shown on the taxpayer's return for the applicable year that designates the tax year's liability before application of estimated payments, withholding, credits, penalties, or interest by the percentage multiplier determined in subsection (2)(a)(ii). The department may not issue a refund if the amount of the refund is \$10 or less.

(iv) A taxpayer filing a delinquent return after October 15 of the applicable year is not eligible for a refund. A deferred filing by a member of the military under 15-30-313 is not a delinquent return.

(v) If the taxpayer files an amended return or if the department reviews a taxpayer's return and recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer. If the amount of the recalculated refund due the taxpayer exceeds the amount of additional tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the amount of the refund exceeds \$10. If the taxpayer's liability is decreased, any overpayment of the refund calculated by the department based on the original tax liability must be credited against any refund due the taxpayer.

(b) In lieu of receiving a refund under subsection (2)(a), a taxpayer may elect to donate the taxpayer's refund to the state. The department shall provide a method, through mail, the internet, or both mail and the internet, that allows taxpayers to designate that their refund is retained by the state and allows them to select from a list of options detailing the way they prefer that the state use their contribution. A committee must be appointed, consisting of three members of the house of representatives appointed by the speaker and three members of the senate appointed by the committee on committees, to meet annually and advise the department on appropriate spending options.

(c) A fiduciary or beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 is not considered a taxpayer unless the return was filed on behalf of a decedent. A return filed using filing status married filing jointly is considered to have been filed by a single taxpayer.

(3) (a) In order to determine the amount of money transferred from the state general fund to a municipal special fund for tax increment financing as provided in subsection (3)(b), the calculation of the mill rates under 7-15-4286 must include the state equalization aid levy under 20-9-331, 20-9-333, and 20-9-360 as if the full authorized levy were in effect.

(b) The reduction in tax increment, if any, determined as provided in subsection (3)(a) for each urban renewal area, industrial district, or aerospace transportation and technology district that would be attributable to the statewide equalization levy for years in which levies under 20-9-331, 20-9-333, and 20-9-360 are reduced pursuant to 15-10-420(8) and this section must be transferred from the state general fund to the special fund referred to in 7-15-4286 on November 1 of the year in which the budget surplus occurs.

Section 2. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (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.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. If the state general fund has a surplus balance, the department shall use the provisions of [section 1] in calculating the number of mills to be imposed

~~for that year. However, the~~ The number of mills calculated by the department may not exceed the mill levy limits established in ~~those sections~~ 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(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; or
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

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

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, and the provisions of Title 15, chapter 10, apply to [section 1].

NEW SECTION. **Section 4. Effective date.** [This act] is effective January 1, 2008.

NEW SECTION. **Section 5. Applicability.** [This act] applies to tax years beginning after December 31, 2007.

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