



# RESPONSES TO COVID-19: FREQUENTLY ASKED QUESTIONS

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## PROPERTY TAXES

### WHAT ARE STATE AND LOCAL ROLES RELATED TO PROPERTY TAXES?

Most property tax procedures including classes of property, tax rates, appraisal, collection, property tax assistance programs, and appeals are provided for in state law in [Title 15, chapters 6-10, 15-17, and 23](#), MCA. The Department of Revenue appraises property and provides taxable values to taxing jurisdictions.

Local governments, including cities, counties, and school districts, adopt budgets. They use the taxable values provided by the Department of Revenue to determine mill levies based on the adopted budgets.

The state also levies property taxes on all property in the state for K-12 education and the University System. These property tax levies are provided for in state law ([15-10-109](#), [20-9-331](#), [20-9-333](#), and [20-9-360](#), MCA).

County treasurers collect property taxes and distribute them to taxing jurisdictions.

This document responds to frequently asked questions about property taxes during the COVID-19 emergency declaration.

### WHEN ARE PROPERTY TAXES DUE?

#### REAL PROPERTY TAXES DUE NOVEMBER 30 AND MAY 31

Taxes for real property are due November 30 and May 31. Real property includes land and structures. Half of the taxes are due on each date, and late taxes are subject to penalties and interest ([15-16-102](#), MCA). The interest rate is 5/6 of 1% per month and the penalty is 2% of taxes due.

Because the due dates are set in state law, local governments may not extend them.

A city may waive penalties and interest on special assessments for improvements in the city. The city must do this by resolution ([15-16-103](#), MCA).

#### CERTAIN MOBILE HOME TAXES DUE ON DIFFERENT SCHEDULE

Mobile homes on a foundation are considered real property. Taxes are due at the same time taxes are due for other residential property: first payment on November 30 and second payment on May 31.

Mobile homes not on a foundation are considered personal property and the first payment is due the later of May 31 or 30 days after receiving the tax bill (15-24-202, MCA). The second payment is due no later than November 30, but counties may set earlier due dates. Mobile homes in a county on January 1, 2020, would be taxed as follows:

- Mobile home on a foundation: first payment due November 30, 2020; second payment due May 31, 2021;
- Mobile home not on a foundation: first payment due May 31, 2020, or 30 days after receiving the tax bill; second payment due November 30, 2020, at the latest. Counties may set earlier due dates.

Counties could change the second due date for mobile homes not on a foundation if the due date is no later than November 30, 2020.

## SOME PERSONAL PROPERTY TAXES ARE DUE WITHIN 30 DAYS OF NOTICE

Taxes on personal property that are not a lien on real property are due within 30 days of the date on the assessment notice (15-16-119, MCA). The notices are generally mailed in April, so the taxes are due in May. The entire tax bill is due within 30 days of the notice. This is different than real property taxes, which are payable in two halves in November of the current year and May of the next year.

An example of taxes on personal property that are not a lien on real property is business equipment located in a rented building. Taxes on business equipment located in a building that is owned by the taxpayer are paid with the taxes due on the building (November and May).

About 30% of personal property taxes fall into this category and face a May due date for the entire tax bill. Businesses that are closed or operating at reduced capacity due to COVID-19 could struggle to make this payment.

## **CAN THE GOVERNOR DELAY PROPERTY TAX DUE DATES DURING THE EMERGENCY DECLARATION?**

Section 10-3-104, MCA, delegates certain responsibility and authority to the Governor with respect to disasters and emergencies. Pursuant to section 10-3-104(2), the Governor may:

- (a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;
- (b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

As applied here, property tax statutes regulate the collection procedures for the state and local government entities to receive revenue. As such, it should follow that the Governor could “**suspend**” property tax payments, interest, and penalties for the timeframe of the COVID-19 emergency pursuant to section 10-3-104(a), MCA. However, the suspension of property taxes would impair the ability of taxing jurisdictions to receive money to operate, which could result in financial difficulties and the inability to cover operating expenses.

## WHAT HAPPENS IF PROPERTY TAXES ARE NOT PAID?

### TAXPAYERS FACE PENALTIES AND INTEREST, POSSIBLE TAX LIEN

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#### PENALTIES AND INTEREST

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Taxpayers who do not pay property taxes when due are subject to a penalty of 2% and interest of 5/6 of 1% per month (15-16-102, MCA).

#### TAX LIENS

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State law provides for a tax lien process in which the county attaches a tax lien to property for which property taxes are delinquent. The notification of pending attachment of a tax lien is made by the last Monday in June. The county treasurer must attach the tax lien by the first Monday in August.

A taxpayer has 3 years from the date of attachment of the tax lien to redeem the tax lien. After 3 years, the owner of a tax lien can move forward with obtaining a tax deed. The 2019 Legislature revised the tax deed process to require an auction to award the tax deed on property with a residence (Ch. 317, L. 2019).

On March 30, 2020, the Governor issued a directive limiting foreclosures, evictions, and service disconnections. The directive provides in part:

For the duration of this Directive and except as provided herein, there shall be no actions for foreclosure of a mortgage, trust indenture, **or other lien on residential real property**, nor any action seeking a writ, judgment, or order directing the sale of such property or directing the mortgagor, grantor, or other debtor in possession of the property to surrender or vacate the property. [emphasis added]

The directive was initially effective until April 10<sup>th</sup>, and extended until April 24, 2020, so it does not affect the attachment of tax liens to real property, which will occur this summer. However, the effective date of the directive could be amended by the Governor while the emergency declaration remains in place.

Mobile homes not on a foundation are personal property and can be sold in a sheriff's sale as soon as the taxes are delinquent (15-16-119, MCA). The following language in the directive prohibits a sheriff's sale during the effective date of the directive:

For the duration of this Directive and except as provided herein, **no trustee's sale, sheriff's sale, or other involuntary sale of residential real property** (or delivery of any trustee's deed, certificate of sale or sheriff's deed with respect to such sale) **shall proceed**. Residential real property means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.<sup>1</sup>

## UNCERTAINTY ABOUT TAXPAYERS WHO PAY TAXES THROUGH ESCROW ACCOUNTS

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Most taxpayers with a mortgage pay property taxes through an escrow account. The monthly mortgage payment includes an additional amount that is directed to an escrow account. The escrow account contains money for payment of property taxes, homeowners' insurance, and private mortgage insurance. This allows the homeowner to pay these expenses monthly, rather than as lump-sum amounts when the payments are due. Property tax payments from escrow accounts make up a large share of residential property tax payments.

Mortgage forbearance is currently available to some taxpayers, but there is uncertainty about what happens to the escrow account payment. Taxpayers using the forbearance option should discuss escrow account payments with their loan servicer. The taxpayer may still be required to make escrow payments. If the bank covers the escrow costs, the taxpayer should ask when the bank will require repayment of the escrow costs.

## TAXING JURISDICTIONS MAY BE UNABLE TO FUND THEIR BUDGETS

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Property tax revenue is a significant source of revenue for cities, counties, and school districts. If many taxpayers are unable to pay property taxes when due on May 31, these local governments could have difficulty funding their budgets.

See "[Frequently Asked Questions Concerning Montana Statutes and COVID-19](#)" for more details about local governments and school districts.

## CARES ACT FUNDS CANNOT BE USED TO FUND CURRENT BUDGETS

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Section [10-3-203](#), MCA, governs the use of emergency funds received from the federal government and provides:

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<sup>1</sup> The directive explicitly includes mobile homes in the definition of "residential real property" even though some mobile homes are not considered real property under state law.

**Acceptance of services, gifts, grants, and loans.** (1) Whenever the federal government or any agency or officer of the federal government offers to the state . . . funds . . . for purposes of emergency or disaster services, the state, acting through the governor. . . may accept the offer. Upon the acceptance, the governor of the state. . . may authorize any officer of the state . . . to receive the . . . funds on behalf of the state . . . and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds . . . set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1) . . . .

Consequently, section 10-3-203, MCA, authorizes the Governor to accept the funds received under the federal "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act", and they are statutorily appropriated pursuant to 17-7-502, MCA. The funds may only be used for the purposes specified in Section 601(d) of the CARES Act. Section 601(d) of the CARES Act governs the use of funds and provides as follows:

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Therefore, funds received by the State of Montana under Section 601 of the CARES Act may only be used for necessary expenditures incurred due to the public health emergency. The funds cannot be used in place of funds that were appropriated by the Legislature in the 2019 Session. Finally, the funds must be used for expenses incurred between March 1, 2020, and the end of the calendar year. If it is later determined that a state has failed to comply with 601(d), an amount equal to the amount of funds used in violation will be booked as a debt of the state owed to the federal government. Section 601(f)(2). Because section 10-3-203, MCA authorizes that funds received under the CARES are statutorily appropriated, no legislative action is required to appropriate those funds.

As applied here, the funds could not be used to pay for items that were in the budget. Since costs to fund government services outside the COVID-19 were in the budget, the expenses that would be covered by property taxes cannot be covered the funds received by the State for COVID-19 public health emergency expenditures. However, the federal government does have a variety of loans and grants available to local governments as part of the CARES Act. We will continue to learn more as time progresses and the CARES Act is implemented.