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TO: HJ 35 Tax Study Subcommittee

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RE: Carry Forward Authority for State Mill Levies -- Section 15-10-420, MCA

INTRODUCTION

At the request of the HJ 35 Tax Study subcommittee of the Revenue Interim Committee, I was asked to analyze carry forward authority under section 15-10-420(1)(b), MCA, as applied toward the statewide mill levies listed in section 15-10-420(8), MCA.

Before I provide you with my opinion and analysis, a few caveats are necessary. Due to the constitutional constraints inherent in the separate powers of each branch of state government, a legal opinion provided to you by a Legislative Branch attorney is obviously not binding on the Executive Branch.

QUESTIONS PRESENTED

Does section 15-10-420, MCA, permit a carry forward of statewide mill levy authority to subsequent tax years?

BRIEF ANSWER

Not likely. Section 15-10-420, MCA, is not a model of clarity. Under the plain language of the statute, the key inquiry is whether the statewide mill levy limits are included in the prior year's assessment plus inflation calculation. If not, then a carry forward may be present. However, if the statewide mill levy limits are considered in the calculation, then a carry forward is most likely not present. These concepts are addressed in the plain language section of the analysis.

In the event a court were to consider legislative history, then it would most likely determine that a carry forward is only available for mills imposed by a local government and not statewide mills. This concept is addressed in the legislative intent section of the analysis.

It should be noted that great deference and respect must be given to interpretations of a statute by persons and agencies charged with its administration. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 Mont. 392, 395, 715 P.2d 1056, 1058 (1986). There are legitimate arguments on both sides of the question at issue.

STATUTORY BACKGROUND

Section 15-10-420(1)(a), MCA, allows a governmental entity that is authorized to levy mills to 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. This authority is often referred to as "floating" mills. Section 15-10-420(1)(b), MCA, allows a governmental entity that does not impose the maximum number of mills to carry forward the authority to a future year.

Education in Montana is funded through a combination of local and statewide property tax levies. The statewide levies include funding for the K-12 system, the university system, and vocational-technical education. The K-12 levies are often referred to as the "95 mills" but they actually consist of three different mill levies, including: 33 mills for county elementary equalization provided for in section 20-9-331, MCA; 22 mills for county high school equalization provided for in section 20-9-333, MCA; and 40 mills for state equalization provided for in section 20-9-360, MCA. The university system levy is a temporary levy of 6 mills provided for in section 15-10-109, MCA. The current levy terminates December 31, 2028. The vocational-technical education levy is provided for in section 20-25-439, MCA. Unlike the K-12 and university system levies, which are levied on all property in the state, the vocational-technical levy is only levied on property in certain counties that have vocational-technical schools. Those counties are Cascade County, Lewis and Clark County, Missoula County, Silver Bow County, and Yellowstone County. The statewide mills are referenced in section 15-10-420(8), MCA. All of the statewide mill levies provide that they are subject to section 15-10-420, MCA, with the exception of the university levy.

The full text of section 15-10-420, MCA, for reference purposes, is as follows:

> **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 newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.
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> (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.
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> (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)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) 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 under 15-6-134 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) a mill levy imposed for a newly created regional resource authority.

(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:

(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a 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;

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

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703;

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary;

(viii) a levy used to fund the sheriffs' retirement system under 19-7-404(2)(b); or

(ix) a governmental entity from levying mills for the support of an airport authority in existence prior to May 7, 2019, regardless of the amount of the levy imposed for the support of the airport authority in the past. The levy under this subsection (9)(a)(ix) is limited to the amount in the resolution creating the authority.

(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 value in a governmental unit.

ANALYSIS

I. Plain Language -- Section 15-10-420, MCA

When interpreting the meaning of a statute, courts first look to its plain language. *Mont. Sports Shooting Ass'n, Inc. v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003, citing *State v.*

Letasky, 2007 MT 51, ¶ 11, 336 Mont. 178, 152 P.3d 1288. The statute is read as a whole "without isolating specific terms from the context in which they are used by the Legislature". *City of Great Falls v. Morris*, 2006 MT 93, ¶ 19, 332 Mont. 85, 134 P.3d 692. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it. Section 1-2-102, MCA.

Section 15-10-420, MCA, read as a whole, is somewhat complex. As applied, subsection (1)(b) allows a governmental entity that does not impose the maximum number of mills "***authorized***" to carry forward the mill authority to another year. Subsection (1)(b) provides as follows:

> (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. (emphasis added)

Statewide mills are imposed by a "governmental entity". Consequently, the carry forward provision arguably applies to statewide mills under the section (1)(b) language. Given that the carry forward provision likely applies to statewide mills, the next step is to determine the amount of the carry forward. In order to have a carry forward, subsection (1)(b) requires that the government entity "not impose ***the maximum number of mills authorized by subsection (1)(a)***." Subsection (1)(a), in turn, provides as follows:

> (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 newly taxable value, plus one-half of the average rate of inflation for the prior 3 years. (emphasis added)

The formula for the maximum mill levy calculation in subsection (1)(a) does not specifically mention statewide mills. However, the beginning language of the subsection states that it is "subject to the provisions of" the section. One of the provisions of the section regarding statewide mills is subsection (8), which provides as follows:

> (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, ***the number of mills calculated by the department may not exceed the mill levy limits established in those sections***. The mill calculation must be

established in tenths of mills. ***If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.***

Given the interplay of subsections (1)(a), (1)(b), and (8), there appears to be one primary question. Does the authorized mill levy limit in subsection (1)(a) include the statewide mill levy limits (*i.e.,* 95 mills) or exclude the limits?

If a court were to determine that the plain language of subsections (1)(a) does not include the statewide mill levy limits, then mill levy authority could be carried forward to future years when the prior year assessment plus inflation calculation in subsection (1)(a) exceeds the mill levy limits. For example, if the prior year assessment plus inflation calculation for the education levy is 100 mills, there would be 5 mills to use in a future year given that the maximum number of mills available is 95 (100 - 95 = 5). This appears to be the approach that is followed on the worksheets that are prepared by the Department of Revenue.

If a court were to determine that the plain language of subsections (1)(a) includes the imposition of the statewide mill levy limits, then the potential for mill levy authority to be carried forward to future years would not exist. Using the example in the previous paragraph, if the prior year plus inflation calculation is 100 mills, but the "subject to the provisions of this section" language requires a reduction for the 5 mills that cannot be imposed, then the mills would be capped at 95 for that tax year.

Reading the statute as a whole, one could reasonably argue for the usage of either approach. I favor the approach that considers the statewide mill levy limits referenced in subsection (8) as part of the subsection (1)(a) calculation given that the beginning language in subsection (1)(a) references the other provisions of section 15-10-420, MCA. An approach that allows for the carry forward of mills that could not be legally imposed during the tax year seems to defeat the intent of allowing mills to float downward to an amount less than the maximum levy and would typically result in levy amounts equal to the maximum amount.

II. Legislative Intent

It is certainly arguable that section 15-10-420, MCA, is not a model of clarity to understand. When a statute may have some ambiguities due to a large variety of possible situations that are covered, a court is not required under due process standards to find vagueness in the terms used in a statute so as to destroy an act; rather, it is the court's duty to construe a statute so as to be consistent with the will of the Legislature and to comport with constitutional limitations. *In re Mont. Pac. Oil & Gas Co.*, 189 Mont. 11, 18, 614 P.2d 1045, 1049 (1980). Legislative intent may be determined in a number of ways when a statute is ambiguous. A court presumes that the Legislature would not pass a meaningless statute, and the court must harmonize statutes relating to the same subject so as to give each effect. The court can look to the legislative history of the statute. Great deference and respect must be given to interpretation of the statute by persons and

agencies charged with its administration. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 Mont. 392, 395, 715 P.2d 1056, 1058 (1986).

The subsection regarding carry forward authority was enacted by Senate Bill No. 265 (2001) during the 57th Legislative Session. The subsection reads the same today as when it was enacted nearly 20 years ago. The title of the bill was:

> AN ACT ALLOWING A LOCAL GOVERNMENTAL ENTITY TO IMPOSE LESS THAN THE MAXIMUM NUMBER OF MILLS AUTHORIZED AND TO CARRY FORWARD THE AUTHORITY TO IMPOSE THE MAXIMUM NUMBER OF MILLS IN A SUBSEQUENT TAX YEAR; AND AMENDING SECTIONS 7-6-2531, 7-6-4431, AND 15-10-420, MCA.

Senate Bill No. 265 was debated in the Senate Committee on Local Government and the House Committee on Local Government. The legislation had a variety of proponents representing local governments and no opponents. Sen. Hargrove sponsored the legislation. In the Senate Committee on Local Government, the sponsor stated there was a "use it" or "lose it" system, and that if "the maximum mills authorized were not used, they could not be used the next time around."[1] In the House Committee on Local Government, a question was raised as to whether a local government that assesses fewer mills can "bank those" and use them in addition to the cap and the response was "no."[2] The totality of the testimony supported the idea that a local government could voluntarily levy fewer mills than the maximum for any tax year and then get back to where the local government would have been had it not levied less than the maximum amount (the cap concept).

Based on the legislative history, the subsection at issue regarding carry forward authority was limited to allowing a local government entity to carry forward mills and it did not pertain to statewide mill levies. There was no fiscal note attached to the bill indicating a statewide revenue impact, the legislation was never received by a tax committee, and no one mentioned the impacts on statewide mills in the local government committees. Consequently, there is a strong argument that the legislature did not intend to carry forward statewide levy authority to a future tax year.

In conclusion, it is my opinion that there is no carry forward of statewide mill levy authority when the section 15-10-420, MCA, calculation creates a mill levy that is greater than the statutory statewide mill levy limits. However, it should be noted that great deference and respect must be given to interpretations of a statute by persons and agencies charged with its administration. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 Mont. 392, 395, 715 P.2d 1056, 1058 (1986). There are certainly arguments that cut both ways.

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[1] Minutes of the Montana Senate Committee on Local Government, 57th Legislature, p. 16 (Feb. 8, 2001), *available at* https://leg.mt.gov/bills/2001/MinutesPDF/Senate/010208LOS_Sm1.pdf

[2] Minutes of the Montana House Committee on Local Government, 57th Legislature, p. 4 (March 13, 2001), *available at* https://leg.mt.gov/bills/2001/MinutesPDF/House/010313LOH_Hm1.pdf