History Regarding the Application of Section 15-10-420
to School District Levies Established under Title 20
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Introduction

The history and successive amendments to section 15-10-420 since the Legislature first codified this law in the 1999 Legislative Session created some ambiguities regarding the impact of 15-10-420 on levies used for school district funding. Through a cumulative analysis of the progression of such amendments, however, there is a strong argument that school district levies are completely exempt from the limits of 15-10-420, including the uniform elementary (33), high school (22) and statewide (40) mills devoted to constitutional compliance of the school funding formula. Even if not completely exempted, section 15-10-420 has only limited applicability to the 95 mills which does not justify any current reduction in those mills pursuant to the interaction of subsections (1)(a), (1)(b), (5)(a), and (8) of 15-10-420.

Origin and Constitutional Purpose of the "95 mills"

The Legislature passed the 95 mills for K-12 public school funding into law in House Bill 667 in the 1993 Legislature to address the Court's decision in Helena Elementary v. State. The Court in Helena Elementary found that the state's failure to adequately fund the education program on a uniform basis forced an "excessive reliance" upon local variable levies that differed inequitably from district to district. The Court found that the inequities in tax rates caused the state to fail to provide a system of quality public education to each student.

The Legislature responded to the Court's ruling by creating three new, uniform levies "for the purposes of . . . . equalization and state BASE funding program support."

1. Section 20-9-331, 33 mills for elementary equalization;
2. Section 20-9-333, 22 mills for high school equalization; and
3. Section 20-9-360, 40 mills for state equalization.

Because the Legislature adopted these mills to be uniformly applicable to every property taxpayer in the state, these three separate levies became known in their combined form as the 95 mills for school equalization.

Six years after implementation of House Bill 667, the 1999 Legislature implemented substantial changes in local levy limits for counties, cities and school districts. The design of the new limits focused on the mill-based levy limit calculations that apply to counties and cities under the law. During codification, however, the Legislature unintentionally implemented limits on school district levies in Senate Bill 184, 1999 Legislative Session. The Legislature corrected those limits through subsequent legislation.

1999 Legislative Session

Senate Bill 184 by Senator Grosfield in the 1999 Legislative Session first codified section 15-10-420 and provided only a limited exemption from its provisions for school district general fund levies and the levy for tuition. All other school levies were subject to the new limitations of 15-10-420. Senate Bill 184 was about much more than the first codification of section 15-10-420. Senate Bill 184 completely overhauled tax rates for various properties and designated how counties and cities could vary their mills and revenues collected within parameters established by law. The Legislature coordinated Senate Bill 184 with House Bill 678 by Representative Bob Story. House Bill 678 codified an unworkable structure for reimbursement that would have mandated unforeseen and significant cuts to local government and significant class 4 residential property tax increases through the school funding formula.

The free conference committee minutes on Senate Bill 184 reflect extensive confusion among legislators as to the effect of the bill on school funding while contemplating amendments to the bill in an end of the session free conference committee. Among the resources provided to the committee was a handout from the Department of Revenue entitled "Jurisdictions Reimbursed," that stated that Senate Bill 184 did not apply to the 95 mills. That resource and the committee's discussion of it remain the best evidence that the original intent of the Legislature was to exempt the 95 mills from the limitations of 15-10-420.

Almost immediately after passage of SB 184 and HB 678, the Legislature came to realize that these limitations did not work with the revenue-based limits imposed under the school funding formula. School levies were already subject to separate, revenue-based, constitutional education formula limits that did not work correctly with and in some cases conflicted with the new mill-based limits of 15-10-420. The application of the mill-based limits would have created a windfall of funding for schools with growing tax bases and a corresponding shortfall for school districts with declining taxable values.

2001 Legislative Session

The inconsistencies and conflicts in existing law created by Senate Bill 184 and House Bill 678, as well as the unforeseen impacts on local government, became the subject of efforts to resolve in the 2001 Legislature. House Bill 124, Representative Story, became commonly known as "the big bill." The primary purpose of House Bill 124 was to clean up the conflicts and unintended consequences in local government reimbursements created by SB 184 and HB 678, and backfill funding for local governments and schools that the new laws negatively affected. This is where the local government and school district block grants originated, which continued for school purposes until 2017 when the Legislature dissolved them and incorporated the funding to increase GTB support of school district general fund budgets.

The 2001 Legislature amended section 15-10-420 in 6 different bills that passed the Legislature. Only one of those bills, Senate Bill 117 by Senator Tester, did anything of specific substance to the application of 15-10-420 levies for school districts established under Title 20. Senate Bill 117 implemented a blanket exemption from 15-10-420 for school levies established under Title 20.

The title of the bill was "an act exempting all school district levies from property tax mill levy limitations." In Senate Bill 117, the Legislature adopted the language that has remained substantively unamended in the code ever since:

> *"(5) Subject to subsection (8), subsection (1)(a) does not apply to: (a) school district levies established in Title 20."*

The language in section 15-10-420(8) does not re-regulate what 15-10-420(5) exempts. Subsection (8) simply specifies that the Department of Revenue is responsible for calculating levies "established in Title 20", including the 33 elementary mills, 22 high school mills and 40 statewide mills that are each "for the purposes of . . . . equalization and state BASE funding program support." There is no reference in (8) to calculating those mills under limits imposed in (1)(a) of 15-10-420 during that calculation, just as there is no reference to floating mills up and down pursuant to (1)(b) of 15-10-420. To add to these complications, Senate Bill 265 by Senator Hargrove added the float authority under (1)(b) to the law.

There is a strong argument that the combination of the exemption of all Title 20 levies in (5) under Senate Bill 117, combined with the duty of the Department of Revenue to calculate the equalization mills under (8) without any internal reference to (1) means that the Department's duties are self-contained, ministerial in nature and not subject to the burdens or the benefits of (1)(a) and (1)(b).

There are two maxims of statutory construction codified in the Montana Code Annotated that bear on this interpretation of the law:

> ***1-2-101. Role of the judge -- preference to construction giving each provision meaning.*** *In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.*

> ***1-2-102. Intention of the legislature -- particular and general provisions.*** *In the construction of a statute, the intention of the legislature is to be pursued if possible. 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.*

Under these rules of statutory construction above, the following is what the law says:

1. (1)(a) is "subject to the provisions of this section".
2. (1)(b) is silent as to the interaction of this subsection with remaining subsections.
3. (5) provides that subject to subsection (8), school district levies are exempt from the levy limits of (1)(a).
4. (8), identifying the Department of Revenue's obligation to calculate the 95 mills, stands on its own and does not have comparable limiting language ("subject to the provisions of this section") as does (1)(a).

To find that the limitations of (1)(a) apply to the 95 mills, one would have to "insert what has been omitted", i.e., an interpretation that (8) is subject to (1)(a) despite no language saying so, in violation of the rule of statutory construction codified in 1-2-101, MCA. Additionally, under the

rule of statutory construction codified in 1-2-102, MCA, any conflict between the general language in (1)(a) and the specific language in (5) and (8) addressing school levies established under Title 20, the specific K-12 provisions take precedence over the general language in (1)(a).

The Department of Revenue's Historical Position on the Limits and Float Provision in 15-10-420(1)(a) and (1)(b)

Even if the Department of Revenue's obligation to calculate the 95 mills is subject to other subsections of 15-10-420, it would be legally incorrect to select which subsections apply to the Department of Revenue to favor a desired outcome. Either the Department of Revenue is exempt from the remaining subsections of 15-10-420 as argued above, or it is subject to all those subsections, including both limits in (1)(a) and float authority in (1)(b).

The Department of Revenue has long interpreted 15-10-420 to require the Department to both stay within the limits of 15-10-420(1)(a) and authorize them to "bank" the mills that the Department could have implemented if they possessed authority to impose the maximum number of mills under 15-10-420(1)(a) as part of their calculation. The Department has consistently reported this calculation of the float and unused equalization mills in reserve to the Legislature for over 20 years.

The Department's interpretation is consistent with the plain language of 15-10-420(1)(b), which allows "a governmental entity that ***does not*** impose the maximum number of mills authorized under subsection (1)(a)" to "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." Because of the prohibition on floating mills above 95 in (8), the Department is "a governmental entity that does not impose the maximum number of mills authorized under (1)(a)." Subsection (1)(a) does not require any analysis of ***why*** a governmental entity failed to impose the maximum number of mills allowed by (1)(a), only ***whether*** the governmental entity failed to do so.

In this regard, the Department's interpretation is least likely to disrupt the Legislature's clear intent to exempt all school district levies established in Title 20 under the provisions of Senator Tester's Senate Bill 117 in the 2001 Legislature. The Montana Supreme Court has held that "if the intent of the Legislature can be determined from the plain meaning of the words used in the statute, the plain meaning controls." Clark Fork Coal. v. Tubbs, 380 P.3d 771, 777 (Mont. 2016). Between the plain words in 15-10-420(1)(a), (1)(b), (5) and (8), the Legislature's intent to exempt school district levies from 15-10-420 limits can be determined from a careful reading of each of these subsections. Assuming for the sake of argument that there are legitimate arguments on both sides of the question at issue, the Department of Revenue's long-standing, transparently reported, and unchallenged interpretation of a law they are authorized to administer and enforce merits resolving the ambiguity consistent with the Department's interpretation.

"Great deference and respect must be shown to the interpretations given the statute by the officers 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), citing State v. Midland Materials (Mont. 1983), [204 Mont. 65.]; Northern Cheyenne Tribe v. Hollowbreast (1976), 425 U.S. 649, 96 S.Ct. 1793, 48 L.Ed.2d 274.

Applying the "great deference" standard in this case provides a strong argument in favor of the Department's interpretation of 15-10-420, MCA.

The Consequences of a Selective Interpretation of the Application of 15-10-420 to the 95 Mills

The consequences of an interpretation that the 95 mills are subject to the revenue limits of 15-10-420(1)(a) but not authorized to float and bank pursuant to 15-10-420(1)(b) are far-reaching. Such an interpretation would require rejection of 20+ years of consistent interpretation of the law by the Department of Revenue. It would also require rejection of the provisions of several key bills passed by the Legislature affecting school district property taxes, including but not limited to the provisions of Senator Tester's SB 117 (2001 Legislature) specifically and globally exempting school district levies under Title 20 from 15-10-420, House Bill 642 in the 2017 Legislature (expanding GTB support for school levies), and, most recently, House Bill 587, the 2023 Legislature's signature property tax relief proposal, providing $120 million in permanent property tax relief over the next several years through a GTB mechanism that assumes stability in the collection and distribution of 95 school equalization mills.

If the 95 mills are subject to the mill levy limits, but not the float provision of 15-10-420 as argued by some, the 95 mills will become the 81 mills, immediately. This erroneous interpretation will then specifically reverse the intent of the 2023 Legislature in House Bill 587 to drive down property taxes. If the 95 mills become the 81 mills, the interdependent relationship between revenue generated by the 95 mills and the GTB support of school district general fund budgets and countywide retirement levies will require a reduction in state GTB support of local property taxes by approximately $64 million, with a corresponding dollar for dollar increase in variable local property taxes. The 95 mills primarily benefit populated communities with a lower tax wealth per pupil and the increase in taxes caused by this erroneous interpretation will fall on class 4 residential property if accepted. This increase would, if implemented, cause a 45% increase local school district property taxes to support BASE budgets of school districts statewide. Importantly, this shift away from uniform mills to mills that vary from district to district will also place the State back in jeopardy of violating the Court's holding in Helena Elementary by replicating the circumstances of excessive reliance on variable local mills that the Court found violative of the constitutional guarantee of taxpayer equity in Helena Elementary.

Summary:

In short, the legislative history associated with the development and amendment of section 15-10-420 in the 1999 and 2001 Legislatures strongly supports a conclusion that the 95 mills are completely exempt from the limits of 15-10-420. This conclusion is consistent with rules of statutory construction codified in Montana law as well as Senator Tester's blanket exemption of Title 20 school levies in SB 117, 2001 Legislature. Even if the calculation of the 95 mills by the Department under 15-10-420(8) is subject to other subsections of 15-10-420, it is subject to all those subsections, including both the limits of (1)(a), the float authority of (1)(b) and the underlying intent of exemption in (5)(a). This interpretation of a limited impact of 15-10-420 is consistent with the Department of Revenue's long-standing, transparently reported, and unchallenged interpretation of a law the Department is authorized to administer and enforce.

If these reasonable alternative interpretations of 15-10-420 are discarded in favor of a selective reading of 15-10-420 to require a reduction of the 95 mills to 81 mills, the result will be an implied repeal of and contradiction of the intent of House Bill 587, the 2023 Montana Legislature's signature property tax relief bill. Such an interpretation would not only contradict the interpretation of the agency charged with administration and enforcement of 15-10-420, but it would also cause an immediate increase of approximately $64 million in school district general fund BASE property taxes, shifting needed tax relief away from class 4 residential property taxes that benefit through a uniform imposition of mills and higher GTB support.