

# MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

HELENA, MONTANA

Volume 43

Number 2

March 2009

**Important Dates** (*legislative dates subject to change*)

- April 2 – Transmittal of Amendments to General Bills
- April 4 – Last day to request Study Resolution or Committee Bills to implement HB2
- April 14 – Transmittal of amendments to Appropriation Bills
- April 16 – Transmittal of amendments to Revenue Bills and Revenue Est. Int. Res.
- April 20 – Transmittal of Interim Study Resolutions
- April 25 – Sine Die

**2009 Reappraisal**

HB658 is on its way to the Senate Taxation Committee after passing out of the House on third reading March 31. The bill is a result of lengthy debates by both the Joint Select Committee on Reappraisal and the House Taxation Committee. The House Taxation Committee came to a consensus to use HB658 carried by Representative Mike Jopek as the vehicle, and then amended the concepts from HB673 (Representative Hoven and Senator Tutvedt) into the bill. The approach would be almost the same as used in the past two reappraisal cycles with some new twists.

The Department of Revenue has estimated that the 2009 reappraisal cycle would increase residential class 4 property overall statewide by 55%, commercial class 4 property statewide by 34%, agricultural class 3 property overall statewide by 29% and forestland class 10 property overall statewide by 52%. This compares to increases in value for reappraisal for the 2003 reappraisal of 20% for residential class 4 property, 18.5% for commercial class 4 property and 15% for agricultural class 3 property.

The main features of the bill are the reappraisal values for class three, four and ten property would be phased-in over six years, with 16.66% of the reappraisal value change being added each year.

Under the bill a portion of residential and commercial improvements will be exempted based upon the following schedule:

	TY 2009	TY 2010	TY 2011	TY 2012	TY 2013	TY 2014
Residential	35.9%	37.4%	38.7%	39.9%	41.1%	42%
Commercial	15.3%	15.5%	15.7%	15.9%	16.4%	16.6%

The above exemptions are commonly known as the homestead (for residential property) and comstead (for commercial property).

In addition, the bill adopts various tax rates for each of the classes of property:

	TY 2009	TY 2010	TY 2011	TY 2012	TY 2013	TY 2014
Class 3	2.85%	2.7%	2.57%	2.45%	2.35%	2.25%
Class 4	2.85%	2.7%	2.57%	2.45%	2.35%	2.25%
Class 5	.32%	.30%	.28%	.26%	.24%	.23%

All of these provisions are an attempt mitigate the reappraisal and keep reappraisal revenue-neutral statewide. Property owners whose property increased greater than the statewide increase could see their taxes go up. Local governments are required to adjust their mills downward to make the effect of the reappraisal revenue neutral for their district. The 95 statewide mills could decrease somewhat.

In addition, HB 658 provides for the following changes to current law related to how the 2008 reappraisal is implemented:

- Increases the market value amount and income eligibility requirements for the property tax assistance program;
- Residential properties that have an increase in taxable value greater than 55%, and a tax liability greater than \$100 are eligible for additional tax assistance if their income is less than \$85,500:
  - If the eligible residences household income is less than \$28,500 per year, their taxable value increase is capped at 55% over 6 years;
  - If the eligible residences household income is between \$28,500 and \$57,000 per year, their taxable value increase is capped at 60% over 6 years;
  - If the eligible residences household income is between \$57,000 and \$85,500 per year, their taxable value increase is capped at 60% over 6 years;

# Montana Taxpayer

Address all communications to:  
 MONTANA TAXPAYERS ASSOCIATION  
 P.O. BOX 4909, HELENA, MT 59604  
 Telephone (406) 442-2130  
 FAX (406) 442-1230

Web Site – [www.montax.org](http://www.montax.org)

E-mail – [mwhitt@montax.org](mailto:mwhitt@montax.org)

[phyatt@montax.org](mailto:phyatt@montax.org)

Business Office: 506 North Lamborn



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MARY WHITTINGHILL, Helena....President

PAM HYATT, Helena....Office Manager



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- The Department of Revenue is required to mail out notice to potentially qualifying taxpayers advising them they may qualify for property tax assistance or the elderly homeowner credit;
- The partial property exemption for disabled veterans and surviving spouses has been increased;
- For the purposes of determining productivity value for irrigated agricultural land the base water coat has been increased to \$15/ acre, and the labor costs for pivot sprinklers is \$5/ acre, \$10/ acre for tow lines and \$15/ acre for hand-moved or flood irrigated land. In addition, spring wheat from summer fallow land is the base crop from non-irrigated land;
- The household income threshold for the elderly homeowner credit has been increased to \$48,500 and the maximum credit has been raised to \$1,085;
- The bill also establishes a forestland advisory committee to study forestland productivity and other issues surrounding the valuation of forestland for property tax purposes and establishes the capitalization rate to be used for forestland at 8%.
- The Department of Revenue is to provide to the Revenue and Transportation Interim Committee in second and fourth years of the six reappraisal cycle a sales assessment ratio study to apprise the committee of housing market and value trends. The committee could then make recommendations to the 2011 and/or 2013 Legislatures if warranted.

Other concepts contained in other bills could be amended into the HB658. These include:

- Shortening the appraisal to four years;

- Providing for a circuit breaker that is based upon income – for example:

If property taxes paid by owners or rental payments by renters, exceeds 3.5% (or 2% in SB513) of household income, and the total household income is less than \$100,000, the excess property taxes paid over 3.5 % (or 2% in SB513) of household income could be taken as credit on income taxes.

- Finally, another proposal that has been considered is to provide greater property tax relief for residential property that is owner occupied more than 7 months a year.

## More of the Same Tax Bills

Many of the bills that were introduced in the last two sessions came back in either the same form or combined with other “concepts.” Our association, as well as many others have spent an incredible amount of time this session, during the last two sessions and during the interim studying these concepts and proposals. In some situations we were able to address the Department’s concerns regarding tax collections with other legislation. We believe legislation that make changes to our tax system should add simplicity and administrative efficiency.

Following are some of the bills we opposed and that have missed transmittal.

- HB647 – Representative Barrett - this bill would have created the Montana real estate backup withholding act; requiring withholding for income tax purposes on the gain from the sale or exchange of certain Montana real estate; establishing a withholding tax rate; providing exceptions to withholding; establishing reporting and remittance requirements; requiring that certain information be submitted with the realty transfer certificate; prohibiting the recording of a transfer of Montana real estate or a change in ownership records of Montana real estate for property tax purposes if the required information is not provided; providing rulemaking authority to the department of revenue; clarifying the liability of clerks and recorders.

The Montana Land Title Association members have conducted numerous studies since this proposal was first introduced in the 2005 Session. Their conclusions are far below the department estimates. We believe it is better to pass legislation to make the departments efforts at collections more efficient and easy to administer. We also believe that education plays an important part of tax compliance. That is why numerous associations came together to produce a [brochure](#) explaining responsibilities for reporting Montana source income.

We also worked with legislators on legislation that would facilitate collections. For example, SB181 (Senator Esp) was signed by the Governor on March 17, 2009. This bill requires closing agents to submit 1099s to the department electronically. This, along with the addition of the last four digits of the taxpayer ID on the Realty Transfer Certificate will help the department identify taxpayers who may owe tax on the gain of the sale of their property. Last session, HB680 was supported by our same coalition to add yet another tool to help the department with collection efforts.

- HB651 – Representative Cohenour – this proposal would require the disclosure of reportable transactions; providing a penalty for failing to report a reportable transaction; providing a penalty for a listed transaction understatement; providing a penalty for promoting abusive tax shelters; providing a penalty for a substantial understatement of tax; providing a penalty for failing to provide information; providing a penalty for filing a fraudulent return; providing for voluntary compliance programs; clarifying the interest rate on corporation license tax refunds; extending the time within which certain deficiencies may be assessed; requiring corporations to furnish other state returns and adjustments; requiring corporations to file information about state tax return items and filing positions taken in other states; requiring certain taxpayers that protest taxes assessed on certain centrally assessed property to support their asserted protest value with a written appraisal; prohibiting the use of contingency fee appraisals in property tax appeals.
- HB652 Representative McAlpin – this bill would have prohibited the practice commonly known as insurance stuffing by specifying when corporations may properly take a dividends-received deduction for dividends received from insurance companies; specifying how to calculate the appropriate dividends-received deduction in those circumstances; disregarding the permanent deferral of gain recognition for certain transactions; authorizing the department of revenue to include in the gross income the taxpayer's pro rata share of any of those insurers' current earnings and profits in that taxable year; providing a safe-harbor and allowing a corporation to demonstrate a legitimate business purpose for certain transactions.

“Insurance stuffing” was also the subject of a very similar bill by Senator Wanzenried (SB 211) that was tabled earlier in the Senate Tax Committee.

To the best of our knowledge, no other state has adopted this legislation. In 2005, the department said there were four companies they knew of. This

year, they indicated there were two. Since none of these companies sell insurance in Montana, they would be subject to the corporation income tax instead of the insurance premium tax. The department of revenue would have the authority to audit and/or issue a deficiency assessment if they believe back taxes are due. Since the department has indicated they know who they are, there is nothing preventing the department from going after these two taxpayers. This legislation was not necessary.

- HB650 – Representative French – This new proposal would have created the mineral lease conveyance backup withholding act; providing definitions; requiring mineral leasehold interest purchasers to withhold taxes on payments for mineral leasehold interests; providing exceptions to the withholding tax; making mineral leasehold interest purchasers liable for payment of withholding taxes; providing a withholding tax rate and remittance schedule; requiring mineral leasehold interest purchasers to provide annual statements to mineral leasehold conveyors and the department of revenue; providing for penalties, interest, and remedies; requiring the reporting of transfers of mineral interests under the realty transfer act.

Once again, to the best of our knowledge this would have been another “first” for Montana. The proposed legislation would have been extremely difficult to monitor and comply. The department was unable to establish why this legislation was necessary.

- HB668 – Representative French – An act that would have changed the current valuation method used on railroad property in Montana by eliminating the statutory formula.

The statutory formula for railroads has prevented litigation and has provided Montana schools, local governments and the general fund stable and predictable revenues. The department is able to provide sanity checks on the value to make sure it is in range with the methodology used in the past. We would like to see other centrally assessed companies valued on by statutory formulas to eliminate litigation and to provide more stability and predictability to our tax system.

- HB675 – Representative Wiseman – This bill would have established an energy education trust fund to supplant statewide school property tax mill levies; providing that the trust fund receives revenue from abolishing oil and gas production tax holidays and a portion of the coal severance tax; providing for a distribution to counties of oil and gas production tax revenue.

Although proponents attempted to show Montana's tax rate for oil and gas companies is lower than even Wyoming, they failed to recognize the entire matrix of taxes imposed on these companies in Montana. The oil and gas holidays were established for a purpose – to bring energy investment back into Montana. It has worked well and the statistics show that it worked. We also opposed using tax revenue that is subject to global prices and supply and demand issues particular to Montana, this was not a good revenue stream to use for education.

- SB506 – Senator Essmann - This bill would have allowed for local option tourist (limited sales) taxes to be adopted by cities or counties. A 4% local option sales could have been assessed on all tourist items:
  - lodging facilities and campgrounds as defined in 15-65-101;
  - meals prepared either for onsite consumption or to take out;
  - alcoholic beverages sold by the drink, including wine sold by the bottle for on-premises consumption;
  - rentals of automobiles and recreational vehicles including boats, snowmobiles, off-highway vehicles, motorcycles, and other vehicles used for travel or recreation and rentals of camping, hunting, fishing, or other recreational equipment;
  - recreational services, including but not limited to hunting and fishing guide services, guided tours, trail rides, helicopter sightseeing tours, historical or special sightseeing train rides, and admissions for water slides, amusement parks, hot springs, or other resorts;

The bill passed out of the Senate Taxation Committee 6 to 5, but failed on Second Reading on the floor of the Senate, 13 – yes, 35 – no. Attempts to pass a local option sales has occurred in every legislative session in recent years. The Montana Taxpayers Association continues to oppose them because of the targeted nature of these taxes and the increased cost of doing business associated with multiple jurisdictions imposing, collecting and auditing the same businesses.

In other legislative action, Senator Lewis is carrying a bill (SB491) supported by the Montana Association of Counties and the Montana Taxpayers' Association. This bill clarifies the calculation of permissive levies for group benefit insurance for local governments. Local governments who over-levied will be giving a five year transition to clear up any over-assessments.

### 2009 Legislative Budget Update

Page 5 contains a copy of the Legislative Fiscal Division's General Fund Status Sheet as of March 26,

2009. This document shows the total effect of Legislative Action taken on the state's budget through this date. It also includes actions that affect expected revenue and expenditures through the 2011 Biennium. For more details on the General Fund Status Sheet (GFSS) click here: [Status Sheet #4](#).

The top part of the GFSS labeled **Fiscal Condition Without Legislative Action** shows the beginning fund balance of \$421.781 million, and the projected ending fund balance of \$785.595 million. The difference is the revenue that was initially adopted by the Revenue and Transportation Committee in HR2 minus the base budget expenditures for all agencies, estimated statutory appropriations, estimated transfers, estimated costs for the 2011 Legislative Session and any reversions by agencies.

The next section is labeled **Summary of Legislative Action** and this section is broken into three subsections – **Revenue Adjustments, Appropriation Adjustments** and **Other Adjustments**.

### Revenue Adjustments

Since our last update in the January/February newsletter, the House Taxation Committee has acted twice on the General Fund revenue estimates. On February 18<sup>th</sup> they adopted revenue estimates that were based upon the LFD's recommendations and reduced the HJ2 estimates by \$251.7 million, then again on March 13<sup>th</sup> they reduced them another \$40.9 million. This brings the total reduction recommended from the Revenue and Transportation Interim Committees estimates contained in HJ2 as introduced to \$292.618 million for the three years period, FY 2009, 2010 and 2011.

Also, taken into account in this subsection are Legislative actions that increase or decrease expected revenues for the biennium through legislative bills that have passed at least one house of the Legislature. To date, this amounts to a net reduction of estimated revenue of \$41.501 million through the 2011 Biennium.

### Appropriation Adjustments

Actions taken in House Bill 2 (HB2) show an increase in appropriations of \$217.208 million for present law activities. Present law increases are those increases in costs to agency budgets to do the work they are currently doing – e.g. an increase in the cost of government.

In addition, there is an estimated cost for new proposals – e.g. the cost of the enactment of new laws or the cost new duties being assigned to agencies. The net adjustment for new proposals to date is a reduction in costs of \$1.702 million. In summary the action taken up to March 26, in HB2 will result in state government spending \$215.506 million more.

The next section shows a net increase available to the general fund of \$29.948. This is the net affect of using a portion of Montana's Federal Stimulus funding -

# Legislative Fiscal Division

## General Fund Status Sheet

2011 Biennium (Figures In Millions)

03/26/2009

05:27 PM

67 th Legislative Day

Status #4

### Fiscal Condition Without Legislative Action

Beginning Fund Balance (Without Feed Bill & Supplementals)	\$421.781	+	
Revenue & Transportation Committee Revenue Estimates	3,815.117	+	
Base Appropriations Using Fiscal 2008 + Statewide Adjustments	(3,076.053)	-	
Estimated Reversions and 2011 Legislative Session	(0.843)	-	
Estimated Statutory Appropriations	(355.713)	-	
Estimated Transfers	(18.694)	-	
Estimated Adjustments & Residual Transfers	<u>0.000</u>	+	
 Ending Fund Balance Without Legislative Action	 =		 \$785.595

### Summary of Legislative Action - Dollar Change From Above Amounts

#### Revenue Adjustments

HJ 2 Revenue Estimates		-	(292.618)
House Taxation	2/18/2009 Action (251.728)		
House Taxation	3/13/2009 Action (40.890)		
Senate Taxation	No Action 0.000		
Senate Floor	No Action 0.000		
Conference	No Action 0.000		
 Revenue Legislation (See Table 1 For Detailed Bill Listing)		-	 (41.501)

#### Appropriation Adjustments

HB2 General Appropriation Bill	<u>Present Law</u>	<u>New Proposal</u>	-	(215.506)
hf General Government	(3.002)	(1.591)		
hf Health & Human Services	(80.741)	(6.041)		
hf Natural Resources & Transportation	(2.054)	(1.570)		
hf Judicial Branch, Law Enforcement, Justice	(35.587)	(3.550)		
hf Education	<u>(95.824)</u>	<u>14.454</u>		
Total General Appropriation Bill	(\$217.208)	\$1.702		
 HB645 Federal Stimulus (Net Impact to General Fund)			+	29.948
General Fund reductions to other bills		292.915		
HB0002 General appropriations act		247.352		
HB0005 Long-range building appropriations -- include energy conservatio		22.057		
HB0010 Long range information technology funding bill		11.366		
HB0013 Pay plan for state employees		7.140		
HB0135 Revise laws implementing the Fort Belknap-Montana Water Righ		1.000		
HB0161 Establish the Blackfoot-Montana Water Compact		4.000		
General Fund Appropriations/Transfers (See Table 2 For List)		(262.967)		
 Other Appropriation Legislation (See Table 1 For Detailed Bill Listing)			-	 (79.964)
 <u>Other Adjustments</u>			-	 (4.912)
Unanticipated Statutory Appropriation due to Executive Decision		(0.812)		
Department of Corrections Carryforward		(5.100)		
Additional Department of Public Health Human Services Reversion		1.000		
Total Legislative Action			-	(\$604.553)

**Fiscal Condition With Legislative Action**      \$785.595 + (\$604.553) = **\$181.042**

The fiscal condition above includes the Governor's authority to expend \$16.5 million out of the general fund account for emergencies.

\$292.915 million to reduce expenditures that would otherwise come from the General Fund. The Legislature introduced HB645 to transfer the stimulus money between the various appropriation bills. This additional money reduces the General Fund by \$262.967 million.

It is interesting to note that the revenue estimates for 2009, 2010, and 2011 have been reduced by some \$292 million, but they put back into the General Fund \$292 million using federal stimulus dollars. Thus, despite revenues being projected to be less, the Legislature hasn't reduced spending.

Finally within this section is the net appropriation for other action in other bills beside HB2 - \$79.964 million.

**Fiscal Condition with Legislative Action**

As you can see the projected ending fund balance as shown on GFSS is \$181.042. However, there is still sufficient time left in the Session to change these numbers dramatically. We'll have the rest of the story next month.

**HEARD IN THE HALLS**

*Rumor has it that the session may end a little early.*